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ARTICLE IV - PROCEDURES

The purpose of this article is to consolidate the procedures for filing and processing applications for development approval. The format is designed to allow the reader to quickly and efficiently ascertain the various steps involved in obtaining development approval, from the initiation and filing of an application, administrative completeness review, review for compliance with substantive standards, and hearings. Division 1 describes the elements common to all types of permits, while divisions 2 through 9 set out the procedures for specific types of permits. Division 10 establishes procedures for appeals and variances. Violation procedures are established in Division 11.

The provisions of this Article implement the following policies of the Master Plan:

- *Growth Management, Policies 1a and 1b: Include public participation in the land use regulation review process and the land use decision making process.*
- *Growth Management, Policy 2c: Strengthen links between zoning and the goals of the community by promoting neighborhood involvement. Encourage neighborhood associations and interested citizens to review land use issues involving their community.*
- *Growth Management, Policy 2e & Economic Development, Policy 2e: Facilitate communication between businesses, neighborhoods, development interests, neighborhood associations and advisory boards, community-based groups and other interested parties with respect to economic development or re-development.*
- *Neighborhoods, Policy 1c: Encourage businesses and developers to work with neighborhood residents in the location and design of new development to enhance or complement the character or size of existing neighborhoods.*
- *Neighborhoods, Policy 2e: Notify neighborhoods of major capital improvements projects and of zoning and subdivision plans at time of formal application.*
- *Neighborhoods, Policy 2: Strengthen the use of the neighborhood planning Process and neighborhood plans.*
- *Economic Development, Policy 2b: Promote consistency in the development process.*
- *Economic Development, Policy 2b: Provide information on and streamline the business and real estate development process.*
- *Economic Development, Policy 2b: Periodically review and revise the city's policies, procedures and permitting processes so that applicants are treated equitably and efficiently.*

Article IV Introduction continued

- *Natural Resources, Policy 2c: Improve the efficiency of the city's environmental review functions to assist all new development projects and redevelopment initiatives to meet federal, state, and local environmental standards and permit requirements.*
- *Natural Resources, Policy 2d: Develop ordinances which preserve integrity of the natural settings of neighborhoods, communities, open spaces and parks, and develop clear procedures for their enforcement.*

Division 1 - General

35-401 General Procedural Requirements

(a) Common elements

This division describes procedural elements common to all applications. The specific procedures followed in reviewing various applications differ. Reference shall be made to the appropriate section in this chapter which addresses the procedures and requirements of a particular application. Generally, the procedures for all applications have five common elements:

- submittal of a complete application, including required fee payments and appropriate information; and
- review of the submittal by appropriate staff, agencies, and boards; and
- action to approve, approve with conditions, or deny the application; and
- appeals; and
- a description of the actions authorized by the permit and the time period for exercising rights under the order or permit.

This division describes procedural elements common to all applications. Divisions 2 through 9 describe the procedures for processing certain types of applications. Each division or section relating to procedure provides the following information:

(1) Initiation.

This section describes how the application for the permit is filed.

(2) Completeness Review.

This section describes the process for determining whether sufficient information has been submitted in order to process an application. This includes the required fee payment and appropriate information. A determination that an application is complete or incomplete does not constitute a determination as to whether the application complies with the standards for approval of the application.

35-401 continued**(3) Decision.**

This section describes the procedures for review of the submittal by appropriate staff, agencies and boards and for reaching a decision as to whether the permit is approved, denied, or approved with conditions.

(4) Approval Criteria.

This section lists any criteria for approval of the particular application. These criteria supplement any other criteria required by this chapter for approval of the application.

(5) Subsequent Applications.

This section provides a waiting period for some applications in order to avoid consuming resources on the processing of repetitive applications.

(6) Scope of Approval.

This section indicates the rights that an applicant obtains from approval or conditional approval of an application, and what actions the permit authorizes and the time period for exercising rights under the order or permit. The duration of a permit may also be subject to § 35-711, "permit rights."

(7) Recording Procedures.

This section describes how the decision on the application is recorded in the public records.

(b) Categories of Permits

There are three basic categories of permits and/or development orders pursuant to this chapter. These categories are defined as follows:

(1) Legislative Development Orders.

Legislative development orders involve a change in land use policy by the city council. A public hearing is required, but the procedural requirements of a quasi-judicial hearing do not apply. Examples include annexations and rezonings.

(2) Quasi-Judicial Decisions.

A quasi-judicial decision involves the application of a standard required by this chapter to an application. It requires a public hearing. Procedural due process requirements apply as established in § 35-404 of this Article. Examples include, variances, and appeals.

(3) Ministerial Permits.

Ministerial permits involve the application of the standards of this chapter to an application by an administrative official or agency. A public hearing is not required. A ministerial permit typically occurs late in the development approval process. Examples include building permits and certificates of occupancy.

(c) Building Permits required

No building or structure shall be erected, added to, or structurally altered within the city limits until a permit therefore has been issued by the director of development services. All applications for building permits shall comply with the requirements of this chapter. No such building permit, certificate of appropriateness, or certificate of occupancy shall be issued for any building where said construction, addition, or alteration or use thereof violates any of the provisions of this chapter, except upon written order of the board of adjustment.

(d) Certificates of occupancy**(1) Requirement.**

Except as provided in subsection (2) below, all uses, including nonconforming uses, shall obtain a certificate of occupancy as required by the Uniform Building Code.

(2) Exceptions.

The following uses shall not require certificates of occupancy:

- Single-family dwellings (excluding accessory dwellings as provided in § 35-371 of this Ordinance).
- Registered family homes.
- Group day-care homes.
- Home occupations

(3) Records.

The director of development services shall maintain a record of all certificates of occupancy and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the property affected.

(Ord No. 98697 § 4)

35-402 Completeness Review

The provisions of this section apply to any application, unless otherwise provided in the provisions pertaining to the regulations for the specific application or Permit.

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- (a) **Pre-application Conference** *Before any application is filed with the director, the applicant may attend a pre-application meeting with the director or his designee. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for an application pursuant to this chapter.*

(b) **Application Materials**

- (1) No application shall be deemed complete unless all of the information required by Appendix "B" is included, and all filing fees required by Appendix "C" have been paid. An application, which includes such information, shall be deemed complete.
- (2) Current application materials shall be made available in the applicable department offices. Such applications shall be filed in advance of any public hearing or public meeting required pursuant to this chapter or statute. The director may establish a schedule for filing any application requiring action by the planning commission, zoning commission, or the city council, while the director of development services may establish a schedule for filing any application requiring action by the historic and design review commission. Such schedule shall provide adequate time for notice and/or publication consistent with the applicable state statutes and this chapter. Completed applications shall be filed according to any published schedule of the applicable department.

(c) **Review Procedures**

These procedures shall be used to review any application for completeness unless a different procedure is established elsewhere in this chapter. for purposes of this subsection, the term "director" shall include any administrative official with original jurisdiction to review an application for completeness, and the phrase "appellate agency" shall include any agency, board or commission with jurisdiction to review any decision of the administrative official for completeness (see subsection (1), below).

(1) **Jurisdiction.**

Unless the provisions pertaining to a particular application or development order or permit prescribe otherwise:

- A. All applications for approval of a development order or a permit shall be reviewed by the applicable director for completeness.
- B. All decisions of the applicable director or other administrative official pertaining to

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- C. completeness may be appealed to (1) the board of adjustment, in the case of a zoning application (Article IV, division 3 of this chapter) (see § 35-481 of this chapter), (2) the historic and design review commission, in the case of a certificate of appropriateness, or (3) the planning commission for all other applications.

(2) Time Limits Triggered by Complete application.

Whenever this article establishes a time period for processing of an application by the city, such time period shall not commence until the applicable director has reviewed such application for completeness in order to determine whether the application has been properly submitted and the applicant has corrected all deficiencies in such application. Review for completeness of application forms is solely for the purpose of determining whether preliminary information required for submission with the application is sufficient to allow further processing, and shall not constitute a decision as to whether application complies with the provisions of this chapter.

(3) Review By Applicable Director and Appeal – Default Procedure.

- A. Unless a different procedure is described in this article, the provisions of this subsection shall apply to the review of an application for completeness.
- B. Not later than five (5) working days after the applicable director shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant. If the written determination is not made within five (5) days after receipt of the application, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 5-day period shall begin, during which period the applicable director shall determine the completeness of the application. If the application is determined not to be complete, the applicable director's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the applicable director in response to the list and description.
- C. If the application together with the submitted materials are determined not to be complete, the applicant may appeal that decision in writing to the appellate agency. The appellate agency shall render a final written determination on the appeal not later than the next available meeting after receipt of the applicant's written appeal. Notwithstanding a decision by the applicable director that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 5-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

- D. Nothing in this section precludes an applicant and the applicable director from mutually agreeing to an extension of any time limit provided by this section.

(4) Time limits.

If a time limit other than that prescribed by subsection (3), above, is prescribed for a determination of completeness for a specific application for development approval and the reviewing agency fails to act within said time period, the application shall be deemed complete.

(5) Limitation on Further Information Requests.

After the applicable director accepts an application as complete or following a determination by the appellate agency that the application is complete, the applicable director or the reviewing agency shall not subsequently request of an applicant any new or additional information which was not specified in Appendix "B". The applicable director or the reviewing agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

The provisions of this subsection shall not be construed as requiring an applicant to submit with his or her initial application the entirety of the information which the reviewing may require in order to take final action on the application. Prior to accepting an application, the applicable director shall inform the applicant of any information included in Appendix "B" that will subsequently be required from the applicant in order to complete final action on the application.

(Ord. No. 98697 § 1)

35-403 Notice Provisions**(a) Generally**

The notice requirements for each type of application for development approval are prescribed in the individual subsections of this Article applicable thereto and/or the Texas statutes. The notice requirements for certain types of public hearings are established in Table 403-1 below provided, however, that to the extent of any inconsistency between the provisions of this section and any state statute, the state statute shall govern.

(b) Contents of Notice

The notice shall state the time, date and place of hearing and a description of the property subject to the application. The notice shall include, at a minimum, the following:

- The street address, if the street address is unavailable, the legal description by NCB/CB, Block, and Lot metes and bounds or a general description of the location of the property, either using block numbers, nearby street intersections or approximate distances from intersections.
- The current zoning classification, if any; and
- The category of permit requested and a brief description of the proposed development including Density or Building Intensity, revised zoning classification (if any), and uses requested.

In Table 403-1, the method for providing notice is provided in column (A) and the types of permits affected are set forth in columns (B) through (L). In Table 403-1, an asterisk (*) indicates that the type of notice prescribed in column (A) is required for the category of development order prescribed in columns (B) through (L), while a dash (-) indicates that the notice is not required.

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**Table 403-1
Notice Requirements**

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(J)	(K)	(L)
<i>Type of notice</i>	<i>Amendments to Master Plan or this chapter</i>	<i>rezoning</i>	<i>master development plan</i>	<i>Appeals to board of adjustment</i>	<i>Variances from and/or granting of special exceptions by the board of adjustment</i>	<i>Subdivision Plat, Major</i>	<i>Subdivision Plat, Minor</i>	<i>Certificate of Appropriateness</i>	<i>Permits, Orders or Approvals not Mentioned Requiring Public Hearing</i>	<i>Request for Demolition of a Historic Landmark</i>
Publication: Publication in an official newspaper of general circulation before the 15th day before the date of the hearing.	*	*	--	10 days	*	*	--	--	*	--
Mail: Written notice of the public hearing shall be sent	--	*(1)(2)(3)	*(2)	*(1)(2)	*(1)(2)	*(1)(2)	(1)	--	*(1)	*(1)(2)
Internet: post a copy of the notice on the city's Internet website until the proceeding has been completed.	*	*	*	*	*	*	*	*	*	*
Signage: post a sign on the property subject to the application Signs to be installed and provided by the city ⁽²⁾	--	*(4) (5)	--	--	--	--	--	*	--	*

Notes:

- (1) Notice shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property, within 200 feet of the property. Notice for zoning cases shall be sent prior to the 10th day before the date of the public hearing at the zoning commission. Notice for demolition applications shall be sent prior to the 7th day before the date of the public hearing at the historic design and review commission. Notice for plat applications shall be sent in accordance with chapter 212 of the Texas Local Government Code (if a replat requires a public hearing and notice).
- (2) Notice shall be sent to registered neighborhood associations within 200 feet of the project.
- (3) Notice shall be sent to members of the planning team, as defined by § 35-420(b)(3), for the affected neighborhood, community or perimeter plan, as applicable.
- (4) The sign shall measure not less than (96564) 18" X 24" inches and shall contain –
City's name,
Zoning Case #____or HDRC Case #____,
Name of Case Manager, and
Contact telephone number.

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- (5) The sign shall be constructed of corrugated plastic sign stock and shall be in a highly visible florescent style color with contrasting colors. Lettering shall be a block font in as large a type as permitted by the sign size. The requirement for the posting of signs on individual lots and properties shall be waived for city initiated area-wide rezoning consisting of six or more individual lots. However, signs will be placed at the general location of the boundary of the area-wide zoning project and its intersection with major arterial and collector streets that provide ingress/egress to the area subject to rezoning.

(c) Action to be Consistent With Notice

The reviewing body may take any action on the application that is consistent with the notice given, including approval of the application, conditional approval (if applicable) of the application, or denial of the application.

(d) Minor Amendments Not Requiring Renotification

- (1) The provisions of this Subsection (d) shall govern to the extent not inconsistent with provisions relating to minor amendments for a specific category of development permits of development orders. The reviewing body may allow minor amendments to the application without requiring resubmission of the entire application. for purposes of this subsection, "minor amendments" are amendments which:
- A. permit equal or fewer dwelling units, floor area or impervious surface than that requested on the original application;
 - B. reduce the impact of the development; or
 - C. reduce the amount of land involved from that indicated in the notices of the hearing.
- (2) The reviewing agency shall not, in any case, permit as a minor amendment:
- A. an increase in the number of dwelling units, floor area, or impervious surface development,
 - B. a different land use than that requested in the application,
 - C. a larger land area than indicated in the original application, or
 - D. a greater variance than that requested in the application.

In addition, the reviewing agency shall not reduce or eliminate conditions for a specific use authorization or conditional zoning district unless a new notice is provided prior to the final decision thereto.

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(Ord. No. 96564 § 3, Ord. No. 97568 § 2, Ord. No. 98698 § 1, Ord. No. 98772 § 1, Ord. No. 100126 § 2)

35-404 Public Hearings Procedures**(a) Applicability**

The provisions of this section apply to any application involving quasi-judicial or legislative review. The provisions of this section do not apply to any application for a ministerial permit.

(b) Meetings

The planning commission, and zoning commission, and historic and design review commission shall hold regularly scheduled public hearings to receive and review public input on those items required by this chapter. On those items where it has review authority, the zoning commission or planning commission shall recommend that the city council approve, approve with conditions or deny such items. If a comprehensive plan, rezoning, or other land use regulation requiring final approval of the city council, or amendment thereto, or other development approval, has been duly submitted to the zoning commission or planning commission, and said commission has failed to make a recommendation approving or denying such action at two (2) consecutive meetings, such action, at the option of the applicant, shall be deemed to be a negative recommendation. The director shall thereupon submit the proposed land use regulation or amendment thereto or other development approval to the city council for its consideration.

(c) Records

The director of development services shall provide for minutes to be written and retained, shall record the evidence submitted within the hearing time allotted for the item being considered, and shall include a summary of the considerations and the action of the planning commission and zoning commission, while the director of planning shall provide the same for the historic and design review commission.

(d) City Council

The city council shall hold regularly scheduled public hearings to act upon all items required by this chapter to be considered by the city council. The city council shall decide whether or not to approve, approve with conditions (if applicable) or deny such applications.

(e) Quasi-Judicial Public Hearing Procedures**(1) Generally.**

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The provisions of this subsection apply to any application for a variance, appeal or any other action pursuant to this chapter which is considered quasi-judicial under Texas law. In making quasi-judicial decisions, the decision makers must investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land use policies to individual situations, such as variances, and appeals of administrative determinations. These decisions involve two key elements: the finding of facts regarding the specific proposal and the exercise of some discretion in applying the standards of the ordinance. Due process requirements for quasi-judicial decisions mandate that all fair trial standards be observed when these decisions are made. This includes an evidentiary hearing with the right of the parties to offer evidence; cross-examine adverse witnesses; inspect documents; have sworn testimony; and have written findings of fact supported by competent, substantial, and material evidence.

(2) Conduct of Hearing.

Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative. Each person who appears at a public hearing shall state, for the record, his or her name, address, and if appearing on behalf of an organization or group, the name and mailing address of the organization or group. The hearing shall be conducted in accordance with the procedures set forth in this subsection. At any point, members of the body conducting the hearing may ask questions of the applicant, staff or public.

The order of proceedings shall be as follows:

- A. The applicable director or appropriate staff member shall present a description of the proposed development and a written or oral recommendation. The recommendation shall address each factor required by this chapter to be considered prior to action or approval on the development permit.
- B. The applicant shall present any information that the applicant deems appropriate;
- C. Public testimony shall be heard;
- D. The applicable director or other staff member may respond to any statement made by the applicant or any public comment;
- E. The applicant may respond to any testimony or evidence presented by the staff or public; and
- F. The body conducting the hearing shall close the public portion of the hearing and conduct deliberations.

(f) Legislative And Advisory Hearings

The purpose of a legislative or advisory review public hearing is to provide the public an opportunity to be heard consistent with the adoption procedures provided by statute. Unlike quasi-judicial hearings, a legislative proceeding does not require due process protections such as right of the parties to offer evidence, cross-examination, sworn testimony; or written findings of fact. Like quasi-judicial hearings, legislative hearings are public hearings preceded by notice to interested parties. Public hearings are required for legislative review hearings such as amendments to a comprehensive plan, amendments to this chapter (including Zoning provisions of this chapter and the Zoning Map), and applications for a planned unit development.

The order of the proceedings for a legislative hearing shall be as set forth in Subsection (2), above. Testimony may be presented by any member of the public, but need not be submitted under oath or affirmation. The zoning commission or city council may establish a time limit for testimony.

(g) Record of Proceedings

The body conducting the hearing shall record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with state law. Such record shall be provided at the request of any person upon application to the applicable director and payment of a fee set by the city council to cover the cost of duplication of the transcribed record.

(Ord. No. 98697 § 1, Ord. No. 93881 § 5, Ord. No. 98698 § 2)

35-405 Post-Decision Proceedings (See also division 10 of this Article)**(a) Appeals****(1) Applicability.**

Any person, including any officer or agency of the city aggrieved by a final decision relating to a development permit or administrative development approval by the applicable director or final decision-maker may appeal such final determination to the appellate body designated by this chapter, in the manner provided in this section.

(2) Notice of Appeal.

A notice of appeal shall be filed with the board of adjustments within the time period prescribed by the appellate body designated by this chapter, pursuant to VTCA Local Government Code § 211.010(b). The appeal shall contain a written statement of the

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reasons for which the appellant claims the final decision is erroneous. The appeal shall be accompanied by the fee established by the city council.

(3) Time Limit.

The appellate body shall hear and decide the appeal within at least sixty (60) days after the filing of the appealor as required in this chapter.

(b) Appeal from Board of Adjustment

(See Division 10)

(Ord. No. 98697 § 1)

35-406 Revocation of Permit Or Approval**(a) Initiation**

The department of code compliance shall investigate alleged violations of imposed condition or conditions. The results of any investigation shall be brought to the attention of the director of development services who shall make a determination whether or not to terminate or suspend (for a specific period) the permit. Should the director of development services determine that a termination, or suspension, of a permit, is appropriate, a recommendation, including the reason(s) for the his determination, shall be made to the board of adjustment who shall conduct a public hearing on the matter:

(b) Grounds for Revocation

The following shall be considered grounds for revocation of a permit:

- The intentional provision of materially misleading information by the applicant. The provision of information is considered "intentional" where the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence.
- The failure to comply with any condition of a development order or development permit.

(c) Notice And Public Hearing

Notice of the hearing before the board of adjustment shall be provided to the permit holder at least ten (10) working days prior to the hearing. Said notice shall be in writing and delivered by personal service or certified mail to the permit holder and shall inform the permit holder of the director of development services recommendation as well as the date and location of the hearing before the board.

(d) Decision And Notice

An order (decision) to terminate or suspend the permit shall require a vote of seventy-five (75) percent of the members of the board of adjustment or planning commission. Said order shall contain findings that address the basis for the decision by, at a minimum, stating the condition(s) that the board found have been violated, the harm such violation has caused, and that in the case of a suspension of the use, the length of time such violation can be cured and in the case of a termination the reason such violation cannot be cured.

(e) Effect And Appeals

A petition complaining of the board's decision may be presented to a court of competent jurisdiction pursuant to V.A.T.C. Local Government Code § 211.010. Unless a petition is presented within ten (10) days after the decision is filed in the board of adjustment or planning commission's office the decision shall be final on the eleventh day after it is so filed.

(f) Right Cumulative

The right to revoke a development permit, as provided in this section, shall be cumulative to any other remedy allowed by law.

(Ord No. 98697 § 1, 4 & 6)

35-407 Annexation

Procedures for annexation are set forth in:

- Article 1, § 1, paragraph 2 and Article IX, § 123A of the city Charter; and
- Chapter 43, VTCA Local Government Code.

35-408 Neighborhood Registration**(a) Applicability**

Neighborhood registration is established in order to provide notification of neighborhoods for purposes of zoning cases, neighborhood plans, community plans and perimeter plans as provided in other sections of this chapter. The purpose of this section is to establish procedures for the registration of neighborhoods.

(b) Contents

A neighborhood registry shall be maintained by the planning department. In order to be included within the neighborhood registry, the neighborhood association shall provide the following information:

- A map or written description of the neighborhood boundaries
- A list of the officers in the association, including their address and phone number
- A signed copy of the Adopted By-laws
- A regular meeting location and a regular meeting date
- Date the association was founded
- Number of association members
- Approximate number of housing units in the area
- Approximate population of neighborhood

The neighborhood association shall contact the planning department in the event of a change in the above-referenced information. An applicant shall be entitled to rely on the above-referenced information for purposes of preparing any notices or otherwise contacting neighborhood associations where required by this chapter.

(c) Effect of Neighborhood Registry

When a neighborhood association has been registered as provided herein, the planning department shall notify the neighborhood association of any application for rezoning or master development plan approval application filed within the boundaries of a registered neighborhood association. Individual citizens who reside outside the 200 feet notice required by this chapter, but within the boundaries of a registered neighborhood association are considered notified when any such notification is sent to the neighborhood association within 200 feet of the subject site. This notice is a courtesy and hearings may proceed despite claims of a lack of notice.

35-409 Citizen Participation plan**(a) Applicability**

It is the policy of the city to encourage applicants to meet with surrounding neighborhoods prior to filing an application for a permit requiring review and a public hearing. The applicant at his or her option may elect to include citizen participation as a preparatory step in the development process. Inclusion of citizen participation prior to required public hearings will be noted by the governing body when considering the need for a continuance in a given application. It is not the intent of this section to require neighborhood meetings, but rather to encourage meetings prior to the submission of an application for approval and documentation of efforts which have been made to resolve any potential concerns prior to the formal application process.

(b) Recommended Procedures**(1) Meetings.**

The applicant may facilitate at least one (1) meeting with surrounding neighborhoods before formally filing an application.

(2) Target Area.

The target area shall include the following:

- A. Property owners within the public hearing notice area required by Tex. Local Gov't Code § 211.007(c)¹;
- B. A neighborhood association which includes the subject property and/or is within 200 feet of the subject property and is registered with the planning department in accordance with the requirements of 35-420 of this chapter.

(3) Citizen Participation Documentation.

Citizen participation to be most effective should include the following information as required in Appendix B to this chapter. The purpose of citizen participation is to:

- To encourage applicants to pursue early and effective communications with the effected public in conjunction with applications, giving the applicant an opportunity to understand and attempt to mitigate any documentable adverse impact of the proposed project on the adjoining community and to educate and inform the public;

¹ Each owner, as indicated by the most recently approved city tax roll, of real property within 200 feet of the property on which the change in classification is proposed.

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- Provide citizens and property owners of impacted areas with an opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process; and
- Facilitate ongoing communication between the applicant, interested citizens and property owners, city staff, and elected officials throughout the application review process.
- Citizen participation will not produce complete consensus on all applications, but encourages applicants to be good neighbors and allows for informed decision making. The level of citizen interest and area of involvement will vary depending on the nature of the application and the location of the site.

(4) Report on Implementation of Citizen Participation.

To be most effective an applicant should provide a written report on the results of their citizen participation effort prior to the filing of an application. The report will be attached to the planning department's public hearing report. At a minimum, the citizen participation report shall include the following information:

- A. Details of techniques the applicant used to involve the public, including: (1) dates and locations of all meetings where citizens were invited to discuss the applicant's proposal; (2) content, dates mailed, and numbers of mailings, including letters, meeting notices, newsletters and other publications; (3) where residents, property owners, and interested parties receiving notices, newsletters, or other written materials are located; and (4) the number of people that participated in the process.
- B. A summary of concerns, issues and problems expressed during the process;
- C. How the applicant has addressed or intends to address concerns, issues and problems expressed during the process; and
- D. Concerns, issues and problems the applicant is unable to address. This statement shall indicate why the concerns cannot or should not be addressed.

(5) Signature or Affidavit of Compliance.

If the applicant prepares a citizen participation report, the report shall include a list of persons contacted, a list of persons invited to any neighborhood meeting, and one of the following:

- A. The signature of the president or vice-president of any neighborhood associations required to be contacted certifying that the neighborhood meeting was conducted provided, however, that the signature need not certify agreement with the applicant as to any issues raised at the neighborhood meeting; or
- B. If the president or vice-president of the neighborhood associations were unavailable or refused to sign such certification, a statement as to the efforts to contact them and (in the event of unavailability) why they were unable to sign the certification; or
- C. A statement that there are no registered neighborhood associations within the required notification area.

(c) Restrictions on Continuances

It is the intent of this chapter to encourage applicants to involve neighborhoods in the development approval process while, at the same time, streamlining the development approval process through the discouragement of continuances. Accordingly, no person

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who received notice of a neighborhood meeting and failed to participate in a neighborhood meeting shall be permitted a continuance of any hearing relating to a master development plan permit requiring a public hearing. for the purpose of this section, a person will be considered to have "received notice" if their name appears on the invitation list.

35-410 to 35-411 Reserved**DIVISION 2 – MASTER DEVELOPMENT PLANS**

The purpose of this section is to enable the city and developer to collaborate in the processing of large-scale, master planned developments in order to enhance planning and timeliness of plat processing and review. The master development plan is intended to be a flexible plan which is an overview of the applicant's projected land development. In this context, the master development plan will be used to determine if the proposed development is in compliance with current regulations and the city Master Plan, and to ensure adequate traffic circulation within the property to be developed as well as to and from adjoining properties. The master development plan will also serve as a source of information for the city to be used in its planning activities.

The master development plan implements the following policies of the Master Plan:

- *Promote public participation in the land use regulation review process and the land use decision-making process (Growth Management, policies 1a, 1b).*
- *Promote neighborhood involvement and to encourage neighborhood associations and interested citizens to review land use issues involving their community (Growth Management, policy 2c).*
- *Provide information on and to streamline the business and real estate development process (Growth Management, policy 2b).*

(Ord No. 98697 § 6)

35-412 Master Development Plan**(a) Applicability****(1) Mandatory Master Development plan.**

A master development plan shall be required in all instances when a tract of land within the city or its extraterritorial jurisdiction ("ETJ") requests subdivision plat approval in which the entire property will be subdivided in two (2) or more plat phases or units.

(2) Optional master development plan

Sites that meet the following requirements may, but are not required to, submit a master development plan:

- A. The application proposes more than fifty residential dwelling units.
- B. The application generates (upon build-out) more than 101 vehicle trips per peak hour.
- C. The application contains more than 5 acres designated for non-residential use in a mixed-use development.
- D. The application contains more than two lots designated for non-residential use on a five acre or greater size tract of property.
- E. Any application requests rezoning from a residential to a non-residential district or to a higher density zoning classification.

(b) Initiation

The information required by Appendix "B" for a master development plan shall be filed with the department of development services for review by city agencies and departments at least thirty ((30) days prior to a request for letters of certification. A master development plan may be submitted concurrent with an application for a rezoning (see § 35-421 of this Article). Accordingly, an applicant for a master development plan who elects to incorporate citizen participation may follow the recommended procedures pursuant to 35-409 and submit documentation of such efforts at the earliest feasible time in the process

(c) Completeness Review

Completeness review shall be governed by this section and § 35-402, to the extent not inconsistent with this section. The director of development services shall provide a written

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response indicating whether or not the master development plan is complete within five (5) working days after submittal. The applicant shall file a written response to any staff comments or resolve outstanding issues prior to final approval. This response shall occur within thirty (30) days of the mailing date of staff comments unless a time extension is requested and granted in writing. The maximum limit on an extension is six (6) months from the original staff comment date. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision**(1) Type of Decision.**

Within thirty (30) days after certification that the application is complete, the director of development services shall render his decision approving, denying, or approving the application with conditions. The decision of the director of development services shall be considered a ministerial process (see § 35-401(b)(3) of this Article).

(2) Appeal.

The planning commission is hereby granted jurisdiction to consider an appeal by an applicant and to affirm or to reverse, in whole or in part, the decision of the director of development services based on any error in an order, requirement, decision, or determination made by the director of development services in approving, denying, or attaching a condition to the master development plan.

A notice of appeal shall be submitted within thirty (30) working days following receipt of a written denial by the director of development services. A notice of appeal shall be in writing and shall provide a chronological listing of the dates and meetings held during the course of consideration of the master development plan. In addition the notice must outline in writing the specific justifications supporting the appeal. In considering the appeal the planning commission shall not waive any of the standards or regulations set forth in this chapter.

(e) Approval Criteria

No master development plan shall be approved unless it conforms to all applicable requirements of Article 5 of this chapter. The director must approve a master development plan that is required to be prepared under this section and that satisfies all applicable regulations.

(f) Subsequent applications

Master development plan (not applicable)

(g) Amendments**(1) Classification.**

Amendments to a previously approved plan shall be classified as a minor or major revision. Minor amendments may be administratively accepted and will not be subject to review by city agencies and departments. Within twenty (20) working days after filing of the proposed amendments, required items and information, the director of development services shall provide a written response indicating whether or not the revised master development plan has been accepted as a minor or major amendment.

(2) Applicability.

Minor amendments include the following:

- A. Changes to the timing or phasing of the proposed development provided the use and overall geographic land area remains the same.
- B. Adjustment of unit boundaries within tracts or parcels adjoining the outer boundaries of the master development plan provided the use and overall geographic land area remains the same.
- C. A reduction in the number of proposed platted lots provided the use and overall geographic land area remains the same.
- D. A decrease in overall residential density.
- E. Updating of ownership or consultant information.
- F. A decrease in the overall land area, provided the initial design is maintained.
- G. Master development plan or subdivision plat name change.
- H. Change in internal street circulation pattern not increasing the number of lots or lowering the connectivity ratio.

All other revisions shall be classified as major amendments and shall be processed in the same manner as the initial master development plan submittal.

(h) Scope of Approval

- (1) An approved master development plan shall remain valid in accordance with the following time frame:

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- A. The master development plan shall expire unless a final plat is approved within eighteen (18) months from the approval of the master development plan that plats, at least twenty (20) acres or eight (8) percent of the net area of the master development plan area or that requires at least five hundred thousand dollars (\$500,000.00) in infrastructure expenses if the master development plan is one thousand (1,000) acres or less or at least one million dollars (\$1,000,000.00) if the master development plan is more than one thousand (1,000) acres.
 - B. Further, an approved master development plan shall expire unless fifty (50) percent of the net area within the approved master development plan is the subject of final plats or development within ten (10) years from the date of approval of the master development plan. The remaining fifty (50) percent must obtain final plat approval or be developed within ten (10) years after the initial fifty (50) percent of the net area within the master development plan has been platted or developed. Unless specific provisions to the contrary exist in an individual ordinance or city Code provision, the filing of an amending minor master development plan (see § 35-412(g)(2), plat, or replat will not result in a loss of permit rights an abandonment of the original master development plan provided that the required area of acreage within the master development plan platted or value of infrastructure expenses do not fall below the amounts indicated above as a result of the amendment or replat.
- (2) Development activities subject to the requirements of this section may be carried out only in substantial conformance with the approved master development plan and any conditions or restrictions attached thereto. Any deviation from the approved master development plan unless approved in advance and in writing by the director of development services, shall be deemed a violation of this chapter.

(i) Recording Procedures

The master development plan shall be maintained in the permanent files of the director of development services and shall be conformed to in processing any application for rezoning, traffic impact analysis (TIAs), subdivision plats (minor and major), PUD plans and/or utility master plans.

(Ord. No. 98697 § 1)

35-413 PUD Plan**(a) Public Hearing.**

Upon submission of the PUD plan, the director of planning shall distribute copies to appropriate city departments and agencies for review. Upon receipt of all required items and reviews, the director of planning shall schedule a public hearing by the planning

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commission on the proposed plan and shall provide written notice of the hearing to the owners of real property lying within two hundred (200) feet of the PUD boundaries. The notice shall be mailed at least ten (10) days prior to the public hearing date.

(b) Plan Approval.

After the public hearing the commission may approve the plan as submitted, amend and approve the plan as amended, or disapprove the plan. If approved, the plan with any amendments shall be signed by the chairman and secretary of the commission. A copy of the approved PUD plan shall be distributed to the director of building inspections and other appropriate departments/agencies for use in issuing permits.

(c) Plan Changes.

Alterations to a PUD plan shall be classified as either substantial or nonsubstantial amendments. Nonsubstantial amendments may be approved by the director of planning. Substantial amendments shall be considered by the planning commission following the same procedure required for the initial approval of the plan, including payment of the plan review fee. The following criteria shall be used to identify a substantial amendment:

- (1)** A change which would include a land use not previously permitted under the approved PUD zoning.
- (2)** A change which would alter the land use type adjacent to a PUD boundary.
- (3)** A change which would increase the overall density of the PUD by more than ten (10) percent. However, in no instance may the overall density of the PUD exceed that permitted by the base zoning district.
- (4)** A change which the director of planning determines would significantly alter the general character or overall design of the plan.

(Ord. No. 74489, § 1(Att. I), 10-3-91)

35-414 to 35-419 Reserved

DIVISION 3 - ZONING PROCEDURES

35-420 Comprehensive, Neighborhood, Community and Perimeter Plans

Neighborhoods are an essential building block of local planning. The Master Plan provides strong policies encouraging neighborhood participation in the planning and land development process. Neighborhood planning is an important process when it is participatory and inclusive. At the same time, the Master Plan requires development approval processes to be fair and equitable, and for permitting to be streamlined.

(a) Applicability

The provisions of this section govern the development of neighborhood, community and perimeter plans. There are three (3) categories of plans that may be adopted pursuant to this section, as set forth in subsections (1) through (3) below. for purposes of this section, a "plan" shall mean and refer to any neighborhood plan, community plan, or perimeter plan, or any plan adopted pursuant to chapter 219 of the Texas Local Government Code, unless otherwise indicated.

(1) Neighborhood Plans.

Neighborhood plans may include at least one neighborhood unit. A neighborhood unit may encompass an area which includes residences, businesses, parks, schools, undeveloped land, and other community facilities. Populations should generally range from 4,000 to 10,000 people depending on the geographic area and boundaries. A neighborhood unit usually contains at least 1,500 housing units. Neighborhood plans may be incorporated into community plans and shall function as building blocks in the development of community plans.

(2) Community Plans.

Based on the Master Plan policy for sector planning, the community building and neighborhood planning program includes a citywide system of community areas in order to develop community plans. The objective of dividing the entire city into community areas is to establish a framework for: developing community plans that impact and service all citizens of San Antonio; creating a citywide service system that fosters community-based partnerships and civic awareness that improves neighborhoods; and providing a means for articulating community values that is readily available to public and private entities which shape the future development of the community. The proposed community areas shall be identified by the planning department based on the city's current population, and boundaries based on community association areas, the Parks and Recreation System plan Service areas, creeks, freeways, major arterials, and census tracts.

(3) Perimeter Plans.

Perimeter plans are similar to community plans but may cover land areas that lie within the corporate limits, the city's ETJ and that portion of the county outside of the city's present ETJ. Perimeter plans shall serve as amendments to the city's Master Plan for those areas lying within the city limits and shall be subject under state law to the zoning ordinances of the city of San Antonio. All other areas covered by the perimeter plan outside of the corporate limits of the city shall be for general guidance for the subdivision of land and implementation of the Major Thoroughfare plan.

(b) Initiation**(1) Generally.**

The planning process shall be initiated by the director of planning.

(2) Stakeholder Participation.

The process of adopting a plan shall involve key stakeholders including residents, neighborhood associations, community organizations, nonprofits, area institutions, universities, school districts, chambers of commerce, property owners, major employers, and businesses. Stakeholders shall form a planning team to assist with plan development. Plans will undergo continuing city departmental review to clarify and identify any program or policy inconsistencies.

(3) Planning Team.

The planning director shall appoint the members of the planning team. The planning team shall execute a memorandum of understanding which outlines each group's responsibilities and a work program which outlines timelines for plan development. The planning team shall include, to the extent practicable a cross section of the land area to be included in the plan including but not limited to residents (both renters and owners), business persons (both renters and owners), property owners of developed and unimproved properties, and institutional organizations such as school districts and churches. It is recognized that the composition of the planning team shall vary among the neighborhoods according to the land use and development character of each planning area.

(c) Completeness Review

Not applicable.

(d) Decision

The planning department shall forward the plan to the planning commission and city council for adoption as a component of the Comprehensive Master Plan as provided by Article 9, § 122 of the city charter.

(1) Type of Hearing.

The public hearing before the planning commission and the city council shall be conducted as a legislative hearing in accordance with § 35-404(d), above.

(2) Planning Commission.

The planning commission, after public notice in accordance with VTCA Local Government Code § 219.003 shall hold at least one public hearing on such application and as a result thereof shall transmit its report to the city council. A public hearing shall be conducted, and a recommendation shall be submitted, by the planning commission in accordance with the requirements of VTCA Local Government Code § 219.003. Following a briefing from the planning director and consideration of public comments, the planning commission shall recommend to the city council approval of the plan, disapproval of the plan, or approval with changes as necessary to comply with subsection (e) of this section. Neighborhood plans not acted on after two hearings before the planning commission shall at the discretion of the director of planning be forwarded to the city council for consideration without a recommendation by the commission.

(3) City Council.

The city council shall consider the proposed plan at a legislative hearing (see § 35-404(d), above). Following a briefing from the director, review of the recommendations of the planning commission, and consideration of public comments, the city council shall approve the plan or disapprove the plan. The city council may overrule a disapproval of the proposed plan by the planning commission.

(e) Approval Criteria**(1) Contents.**

All plans shall include the following elements: land use, community facilities, and transportation networks. The plan shall contain an existing land use map and a future land use map. The plan shall include cross-references comparing future land use categories to comparable zoning districts established by Article III of this chapter. Pursuant to VTCA Local Government Code §219.005 (notation on map of comprehensive plan), a map of a plan illustrating future land use shall contain the following clearly visible statement: "A comprehensive plan shall not constitute zoning regulations or establish

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zoning district boundaries.” The plans shall include goals, objectives and policies for each element. The plans shall be consistent with the Master Plan. The plans will suggest time frames, responsible parties, and potential funding sources for implementation of the plan.

(2) General Criteria.

Before adopting a neighborhood, community, or perimeter plan, the planning commission shall determine that the plan:

- Identifies goals that are consistent with adopted city policies, plans, and regulations.
- Was developed in an inclusive manner to provide opportunities for all interest groups to participate.
- Is a definitive statement of the neighborhood or community, as applicable, and is appropriate for consultation and reference as a guide by the city council, departments, and commissions for decision-making processes.

(3) Planning Process.

The planning commission shall also evaluate the planning process to determine if the following criteria are met:

- Meetings were open to the public;
- Schedules and planning teams were approved by the planning director;
- Appropriate departments, boards, commissions reviewed the plan; and
- That proper notification was given to nonresidential property owners and the owners of undeveloped property.

(4) Plan Contents.

The planning commission will evaluate the plan's contents to determine if the following criteria are met:

- The plan contents are consistent with city policies, plans, and regulations;
- Comments and recommendations from the pertinent city departments have been considered;
- The elements of the plan will implement the plan's goals and objectives; and
- Issues raised by the stakeholders which are outside the city's jurisdiction are identified.

(f) Subsequent applications

Not applicable.

(g) Monitoring and Amendments**(1) Urban Indicators and Report.**

Urban indicators shall be developed as each neighborhood, community, and perimeter plan is produced. Urban indicators are qualitative or quantitative measures that assess progress towards the goals identified in the plan. A report to measure the success of plan implementation shall be prepared every two years, based on the urban indicators found in each specific plan, by a coordinating group appointed by the planning director consistent with the criteria established in subsection (b)(2), above, in order to implement the plan. The planning director shall distribute the report to the city council and city departments. The report shall not constitute a plan amendment, but shall be considered in updating and amending the plan pursuant to subsection (2), below.

(2) Amendments Required.

Each plan shall be subject to continuing evaluation and review by the planning director and the planning commission. The planning director shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered. The plan shall be reviewed by the planning commission at least once every five (5) years and if necessary amended by the city council. If the review is not performed, any property owner in the planning area may file a petition with the planning director to amend the plan. If the planning director finds that the review has not been performed, he shall initiate the referenced public participation program regarding the proposed amendment and may set a schedule or deadline for the completion of the review. If the plan is not updated pursuant to a petition filed pursuant to this subsection, then subsection (h) shall not apply until such time as the plan is updated.

(h) Scope of Adopted plan

Adoption as a component of the city's Master Plan gives neighborhood plans, community plans, and perimeter plans the legal effect of the Master Plan. (Unless and until such plans are repealed or superseded by an amendment or a new plan adopted pursuant to this section as Master Plan component) for previously adopted plans referenced herein by their title and date of adoption and plans adopted pursuant to this section, the recommended comprehensive rezoning of an area and the evaluation of rezoning request for individual parcels shall be consistent with the adopted neighborhood plan, community plan or perimeter plan. The provisions of this subsection shall apply only to neighborhood plans, community plans, and perimeter plans adopted by the city

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council as amendments to the city's Master Plan. Previously adopted Master Plan component plans are:

- A. Camelot 1 Update neighborhood plan (September 23, 1999)
- B. Downtown neighborhood plan (May 13, 1999)
- C. Five Points neighborhood plan (February 3, 2000)
- D. IH-10 East Corridor perimeter plan (February 22, 2001)
- E. Midtown neighborhoods plan (October 12, 2000)
- F. Northwest community plan (September 24, 1998)
- G. Northeast Inner Loop neighborhood plan (March 22, 2001)
- H. Oakland Estates neighborhood plan (August 31, 2000)
- I. River Road neighborhood plan Update (August 17, 2000)
- J. South Central San Antonio community plan (August 19, 1999)
- K. Westfort Alliance neighborhood plan (September 25, 1997)

In addition to the plans adopted pursuant to this section, the following plans referenced herein by their title and date of adoption may be considered as a guide in evaluating a comprehensive rezoning or a rezoning request (see § 35-421(e)(1) of this Article) unless and until such plans are repealed or superseded by an amendment or a new plan adopted pursuant to this section:

- A. Alamo Farmsteads neighborhood plan (December 22, 1994)²
- B. Alamodome neighborhood plan (May 13, 1993)
- C. Jefferson neighborhood plan Update (November 20, 1997)
- D. Mahncke Park/Narcissa Place neighborhood plan (August 11, 1983)
- E. Meadow Village neighborhood plan (February 25, 1993)
- F. Monte Vista neighborhood plan (July 7, 1988)
- G. North Shearer Hills neighborhood plan (April 8, 1993)
- H. South Riverbend neighborhood plan (January 21, 1988)
- I. Tanglewoodridge neighborhood plan (April 28, 1994)
- J. Tobin Hill neighborhood plan (September 24, 1987)
- k. Woodlawn Hills/Ingram Hills neighborhood plan (June 4, 1992)

³ The Alamo Farmsteads neighborhood plan shall qualify as a guide for rezoning requests only if the neighborhood files a valid application for a new plan pursuant to this section by the effective date of this ordinance.

(Ord. No. 95573 § 8, Amendment "H"), Ord. No. 98697 § 1 & 6, Ord. No. 98698 § 3)

35-421 Zoning Amendments

The purpose of this section is to provide uniform procedures for the amendment of this chapter or the official Zoning Map by the city council whenever the public necessity, convenience, general welfare or good zoning practice so requires.

(a) Applicability

The provisions of this section apply to any application for reclassification of a tract, parcel or land area from one zoning district to another.

(b) Initiation

All petitions, applications, recommendations or proposals for changes in the zoning district classification of property (referred to as a "rezoning") or for changes in the textual provisions of this chapter shall be filed with the zoning commission. Text amendments may be proposed by any person. A proposed rezoning may be initiated by:

- (1)** The city council by resolution; or
- (2)** An application properly signed and filed by the owner or, with the owner's specific written consent, a contract purchaser or owner's agent of a property included within the boundaries of a proposed rezoning, unless otherwise provided by this Ordinance.³ The applicant may file an application for subdivision plat approval concurrent with an application for a rezoning. Applicants are advised, however, that the subdivision plat application shall be subject to the dimensional requirements and all other requirements of the zoning district established in Articles 3 and 5 of this chapter when the plat application is heard by the planning commission.
- (3)** The director of development services pursuant to an annexation service plan or to correct an administrative error in the rezoning of a tract of land pursuant to this chapter.

When an amendment is initiated, an application for such amendment shall be submitted to the director.

(c) Completeness Review

The director of development services shall conduct a completeness review as set forth in § 35-402 of this chapter within two (2) working days of application submittal. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the zoning commission.

³ Note: UDC § 35-605(b)(1) requires concurrence of 51% of the property owners within the boundaries of a proposed historic district.

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For all applications for rezoning, the director development services, with planning department consultation and based on the information provided by the applicant, shall provide an analysis regarding consistency with the policies contained in the Master Plan of the city or if applicable the land use element of a neighborhood, community, or perimeter plan adopted pursuant to §35-420 of this chapter within five (5) working days. If the zoning commission makes a determination that the requested rezoning is inconsistent with the Master Plan policies or the land use element of the applicable neighborhood, community or perimeter plan, then the application for rezoning shall not be deemed complete until a completed application for a Master Plan amendment is filed with the department of development services, provided however, the zoning commission may make a recommendation on the application for rezoning subject to submission of an application for a Master Plan amendment. If the zoning commission determines that the requested change is consistent with the Master Plan policies or the land use element of the applicable neighborhood, community or perimeter plan, then the zoning case may be deemed complete without an amendment to the Master Plan of the city.

Commentary: The Master Plan is the comprehensive plan for the physical development of the city, as prescribed in the city Charter. The Master Plan includes any unit or part of such plan separately adopted and any amendment to such plan or part thereof. Neighborhood, community and perimeter plans are components of the Master Plan. In those cases where the zoning commission finds that an application for rezoning is not consistent with the land use plan element of a neighborhood, community, or perimeter plan the commission may 1.) Continue the zoning case pending a recommendation by the planning commission on a Master Plan amendment 2.) Recommend approval of the zoning case contingent on an application for a Master Plan amendment or 3.) Deny the application for rezoning. Applicants for rezoning are encouraged to request a Master Plan amendment before the submission of the zoning case so that action on the zoning case is not delayed.

(d) Decision

Upon certification by the director that the application is complete and payment of required fees, the application shall be deemed complete and referred to the zoning commission for its review and recommendation as provided by VTCA Local Government Code § 211.007.

(1) Type of Hearing.

The public hearings before the zoning commission and city council shall be conducted as legislative hearings in accordance with § 35-404(d), above.

(2) Zoning Commission.

The zoning commission, after public notice in accordance with VTCA Local Government Code § 211.007(c), shall hold at least one public hearing on such application and as a result thereof shall transmit its final report to the city council. All applications for a change in zoning which have been considered by the zoning commission shall be presented by the applicant to the city council within six (6) months from the date of the commission's final consideration. The application shall be accompanied by the filing fee specified in Appendix "C". In the event the applicant fails to present the application for rezoning to the city council within the prescribed period, a new original application and fees shall be required. A new application shall not be submitted to the zoning commission for consideration prior to the expiration of the six-month time period specified in subsection (f), below, is met. See § 35-404(b) for rules relating to failure of the zoning commission to submit a recommendation.

(3) City Council.

After the final report of the zoning commission is submitted to the city council as provided in (2) above the council shall consider a zoning change after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Before the fifteenth day prior to the date of the hearing, notice of the time and place of the hearing shall be published in an official newspaper or a newspaper of general circulation in the city. After the receipt of the final report of the zoning commission, the city council shall approve or deny the rezoning or text amendment in accordance with VTCA Local Government Code § 211.007.

Should an applicant request that a zoning hearing be postponed after notice thereof has been given, the hearing will not be rescheduled until the applicant pays the postponement request fee specified in Appendix "C".

If the proposed rezoning is inconsistent with the land use plan of a neighborhood plan, community plan or perimeter plan, an application for an amendment to the neighborhood plan, community plan or perimeter plan shall be submitted by the applicant.

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Amendments to both the official Zoning Map and the neighborhood plan, community plan or perimeter plan may be considered concurrently.

An affirmative vote of at least three-fourths of all members of the city council is required to approve a proposed change to a regulation or boundary if the change is protested. The protest must be written and signed by the owners of at least twenty (20) percent of either the area of the lots or land covered by the proposed change or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred (200) feet therefrom. In computing the percentage of land area, the area of streets and alleys shall be included in the computation.

(e) Approval Criteria

In its review of an application for rezoning, the city council shall consider the following criteria. No single factor is controlling. Instead, each must be weighed in relation to the other standards. . If the zoning commission finds that a proposed zoning amendment is inconsistent with the land use element of a neighborhood, community or perimeter plan adopted pursuant to §35-420 of this chapter, as applicable, the application shall not be considered by the city council until a recommendation regarding a Master Plan amendment for the proposed zoning amendment has been forwarded by the planning commission to the city council, either prior to or concurrently with the proposed zoning amendment.

(1) Consistency.

The city council does not, on each rezoning hearing, redetermine as an original matter, the city's policy of comprehensive zoning. The city's zoning map shall be respected and not altered for the special benefit of the landowner when the change will cause substantial detriment to the surrounding lands or serve no substantial public purpose.

(2) Adverse Impacts on Neighboring Lands.

The city council shall consider the nature and degree of an adverse impact upon neighboring lands. Lots shall not be rezoned in a way that is substantially inconsistent with the uses of the surrounding area, whether more or less restrictive. Further, the city council finds and determines that vast acreages of single-use zoning produces uniformity with adverse consequences such as traffic congestion, air pollution, and social alienation. Accordingly, rezonings which promote mixed uses subject to a high degree of design control are not necessarily deemed to be inconsistent with neighboring lands and shall be considered

(3) Suitability as Presently Zoned.

The city council shall consider the suitability or unsuitability of the tract for its use as presently zoned. This factor, like the others, must often be weighed in relation to the

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other standards, and instances can exist in which the use for which land is zoned may be rezoned upon proof of a real public need or substantially changed conditions in the neighborhood.

(4) Health, Safety and Welfare.

The amendatory ordinance must bear a substantial relationship to the public health, safety, morals or general welfare or protect and preserve historical and cultural places and areas. The rezoning ordinance may be justified, however, if a substantial public need exists, and this is so even if the private owner of the tract will also benefit.

(5) Public Policy.

A strong public policy in favor of the rezoning may be considered. Examples include a need for affordable housing, economic development, or mixed use development which functionally relates to the surrounding neighborhoods.

(6) Size of Tract.

The city council shall consider the size, shape and characteristics of the tract in relation to the affected neighboring lands. Amendatory ordinances shall not rezone a single city lot when there have been no intervening changes or other saving characteristic. Proof that a small tract is unsuitable for use as zoned or that there have been substantial changes in the immediate area may justify an amendatory ordinance.

(7) Right-of-way dedication.

- A. When considering a rezoning request initiated by a property owner, the city council may require right-of-way dedication along major thoroughfares and streets which do not meet the minimum right-of-way standards established by Article IV of this chapter. Right-of-way dedication shall be required when the rezoning will change the street classification or increase the amount of traffic on the major thoroughfare or street based on the maximum intensity of the uses permitted in the existing and requested zoning districts.
- B. A change from either temporary or permanent R-4, RM-4, R-5, R-6, R-20 or MH, to a multiple family residence, business, industrial, business park, or entertainment district zoning classification shall constitute prima facie evidence that an increase in traffic shall occur and require right-of-way dedication. The property owner shall have the right to introduce evidence to the zoning commission and city council to show that the zoning change will not increase traffic; however, the evidence must be based on all uses permitted in the requested zoning classification, not solely on the proposed use of the property.

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- C. The city council may require right-of-way dedication in other zoning changes as traffic and street conditions may warrant.
- D. The requirement for right-of-way dedication shall not be construed as a condition precedent to the approval of a change in zoning, but shall be a condition precedent to the granting of a building permit and/or certificate of occupancy.

(8) Other Factors.

The city council may consider any other factors relevant to a rezoning application under Texas law.

(f) Subsequent applications**(1) Applicability.**

The provisions of this subsection shall not apply to any application for a rezoning which is initiated by the city council.

(2) Withdrawal After Zoning Commission Hearing.

No application for the zoning of any lot or lots or block of land situated in the city shall be received or filed with the zoning commission of the city and no hearing had thereon, if within six (6) months prior thereto an application was received or filed and withdrawn after a full, fair and complete and final hearing was had on the rezoning of such lot, lots or block of land before the zoning commission; provided, however, if new relevant and substantial evidence, which could not have been secured at the time set for the original hearing shall be produced by applicant, under a sworn affidavit to that effect; then in that event, the zoning commission shall have the right to hear and consider such application.

(3) Denial of Rezoning.

It is further provided that no application for the rezoning of any lot, lots or block of land situated in the city shall be received or filed with the zoning commission of the city and no hearing had thereon, if within one (1) year prior thereto the city council, after consideration and hearing, has denied an application for rezoning of the same property.

(g) Amendments

Any subsequent rezoning requires a new application for a rezoning and shall be processed as set forth in subsections (b) through (e) of this section.

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(h) Scope of Approval

The approval of an amendment to this chapter or a rezoning shall not be deemed to authorize the development of land. Such an amendment shall authorize the applicant to apply for a building permit, in the case of uses permitted as of right, or a specific use authorization, in the case of uses designated as specific Uses within the applicable zoning district. Such amendment does not supersede any requirement for master development plan or subdivision plat approval by this chapter.

(i) Recording Procedures

When the amendment involves changes to the existing zoning district boundaries, the form of the amending ordinance shall contain a narrative description of the land to be reclassified or reference to an accompanying plat of such land showing the new zoning classifications and indicating their boundaries. The director of development services shall refer to said attested ordinance as a record of the current zoning status until such time as the zoning map can be changed accordingly.

(Ord. No. 98697 § 1 & 6, Ord. No. 98698 § 4)

35-422 Conditional Zoning

The conditional zoning procedure is designed to provide for a land use within an area that is not permitted by the established zoning district but due to individual site considerations or unique development requirements would be compatible with adjacent land uses under given conditions. The granting of a conditional zoning classification shall not be for all of the uses permitted in a given district but shall be only for the conditional use (bookkeeping office, photography studio, etc.) named in the ordinance approving the conditional zoning district.

(a) Applicability

The provisions of this section apply to any application for reclassification of a tract, parcel or land area to a conditional zoning district. Conditional zoning district may be applied as parallel districts to any of the Base Zoning Districts.

(b) Initiation

A proceeding for approval of a conditional zoning district shall be initiated by filing an application with the director of development services. The application shall be signed and filed by the owner or, with the owner's specific written consent, a contract purchaser or owner's agent of a property included within the boundaries of a proposed conditional rezoning. The application for a conditional use district shall be the same as that for a change in the base zoning district. If the requested use(s) is listed as a specific use within the conditional zoning district, the approval of a conditional zoning district shall constitute approval of the specific use or Uses.

A conditional zoning district may be granted as an amendment to an ongoing rezoning case before the zoning commission or city council.

(c) Completeness Review

The director of development services shall conduct a completeness review as set forth in § 35-402 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the zoning commission.

(d) Decision

- The procedure for approving a conditional zoning classification shall be as required for a rezoning (§ 35-421(d)) and as further provided herein. However, if an application for a specific use permit is filed with the application for a conditional zoning district, a public

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hearing shall be conducted as provided in § 35-404 of this Article. In approving a conditional zoning classification, the city council may impose such requirements and safeguards as indicated by (e)(2) below and may specifically authorize the location of uses, subject to the requirements set forth in subsection (e)(2) of this section.

- Procedures for protest petitions shall be as set forth in VTCA Local Government Code § 211.006(d).

(e) Criteria**(1) Permitted Uses.**

Notwithstanding any provisions of this chapter to the contrary, a conditional zoning district may be permitted as provided in this section so long as the criteria for approval of a rezoning are met (see § 35-421(d)). A conditional use permitted in a "UD", "RD", "MI-1", or "MI-2" shall meet all development standards of that district, including location criteria. Uses permitted by right in the districts set forth in column (A) of Table 422-1 below, may be permitted pursuant to a conditional zoning district approved within the zoning districts set forth in column (B) of Table 423-1, as follows:

Table 422-1	
(A) Use authorized by right in:	(B) May be permitted pursuant to a conditional zoning district in:
Any residential district, O-1, NC, C-1	Any residential district
O-1, C-1, C-2, UD	NC, C-1, UD
O-1, O-2, C-2, C-3, UD	C-1, C-2, UD, RD
L, I-1, QD	C-2, C-3, UD, RD, MI-1

Note: The above table is applicable within all approved overlay zones and special districts, including but not limited to, the ERZD, MAOZ and historic districts.

(2) Development Constraints – Generally.

In considering a request for a conditional zoning classification, the zoning commission shall make a recommendation to the city council with reference to the use and development conditions which insure compatibility with surrounding properties. Compatibility in the context of this provision of the UDC shall refer to the compatibility of the proposed use with surrounding uses and adjacent zoning districts and not to building character, construction material or architectural design of the structure itself unless covered by other ordinances. Development constraints that may be specified as a requirement for a conditional zoning classification shall be limited to the following unless approved by the city council:

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- A. Range of allowable uses
- B. Protective screening and/or buffering of property perimeter.
- C. Protective screening/location of dumpsters, mechanical systems and loading docks.
- D. Landscaping relative to screening, buffering and ingress/egress control and not solely for beautification purposes.
- E. Lighting.
- F. Height limitations.
- G. Setbacks.
- H. Parking (the location of parking and in some instances reduction in the amount of parking to be allowed).
- I. Ingress/egress.
- J. Hours of operation for conditional uses permitted in, or adjacent to, residential zoning districts.
- K. Signage.
- L. Performance standards relative to: mechanical operations, air pollution, noise, glare and heat, vibration, noxious odors, toxic and liquid wastes, fire and explosion, radioactivity, electromagnetic radiation, and petroleum and natural gas extraction and production.
- M. Building facades, articulation and building orientation as they relate to the base zoning standards of immediately adjacent zoning districts.

(3) Development Constraints in Residential Districts.

The following conditions in addition to those in subsection (e)(2) above shall apply to the operation of nonresidential conditional uses permitted within any residential district, unless otherwise approved by the city council:

- A. There shall be no exterior display or sign with the exception that a nameplate, not exceeding three (3) square feet in area, may be permitted when attached to the front of the main structure.

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- B. No construction features shall be permitted which would place the structure out of character with the surrounding neighborhood.
- C. Business or office hours of operations shall not be permitted before 7:00 a.m. or after 6:00 p.m.

(4) Variances Prohibited.

A variance shall not be granted to any development constraint specified in this section or to any condition imposed by the city council.

(5) “QD” Special Use Permits

In considering a request for a special use permit for “QD” zoning, the zoning commission may also recommend the application of any or all of the development constraints provided for in section 35-350(c) and 35-350(d) of this chapter as well as require more stringent adverse effects control than is required by section 16-405 of this code.

(f) Subsequent applications

The provisions of § 35-421(f) shall apply to this section provided, however, that they shall apply only to an application requesting the same use as the original application.

(g) Amendments**(1) New or Different Uses.**

An amendment to a conditional zoning district to authorize a new or different use shall require a new application for a rezoning to a conditional zoning district and shall processed as set forth in subsections (b) through (e) of this section.

(2) Expansion.

Expansion of the building area, land area or intensity of the conditional zoning classification for a property granted a conditional zoning classification shall not be allowed unless so authorized by the city council after consideration of an application for a new conditional zoning classification and payment of appropriate fees.

(h) Scope of Approval**(1) Compliance with Development Constraints.**

The city council may grant a conditional zoning classification subject to such development constraints the city council deems necessary to protect the public health,

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safety or welfare and as limited by subsection (e)(2) and (e)(3) above. The city council may specify that compliance with certain conditions must be achieved prior to the issuance of a certificate of occupancy. Violation of any condition, subsequent to the issuance of a certificate of occupancy, may result in initiation of a rezoning of the property to its base zoning classification and judicial and/or administrative action by the city.

(2) Time Period.

A conditional zoning classification shall run with the land until such time that the zoning is changed or the conditional use granted has been discontinued on the property for a period of twelve (12) months. However, the city council may impose a time limitation on a conditional zoning classification granted in a single-family residential district. (As a courtesy the city shall notify the property owner by mail of the upcoming conditional zoning classification expiration sixty (60) days prior to the expiration date of the permitted time period. Lack of notice of the expiration date shall not cause the conditional zoning classification to be extended or continued.) Failure to renew the conditional zoning classification prior to the date of its expiration may cause the conditional use to expire and the conditional use to terminate on that date. The director may then initiate proceedings to rezone the property to its former zoning classification.

(3) Base Zoning District Regulations Apply.

The granting of a conditional zoning classification does not affect uses permitted by right in other areas of the zoning district, but does not permit the applicant to use the subject property for uses other than those requested in the application for a conditional zoning classification. The granting of a conditional zoning classification does not waive the regulations of the underlying zoning district.

(4) Renewal in Single-Family Zoning Districts.

Prior to the expiration of a conditional zoning classification in a single-family residential district, a permit holder may seek a new conditional zoning classification for the subject property in a manner that conforms to this section. Recapture of financial investment relative to a conditional zoning classification shall not be considered as grounds for extension and/or renewal of a conditional zoning classification.

(i) Recording Procedures

A conditional zoning classification shall be recorded in the same manner as a rezoning, subject to the additional requirements specified herein. The conditional zoning classification shall be indicated by the symbols CD following the zoning district designation; e.g. "O" (CD-permitted use).

(j) "SUP" Suffix Designation

Special use permits granted prior to the effective date of this ordinance shall be re-designated from a suffix of "SUP" to suffix of "ESUP" (existing special use) to distinguish those properties from new special use permits to be designated by the suffix "SUP".

(Ord. No. 95326 § 6, Ord. No. 96564 § 2, Ord No. 98697 § 3 & 6, Ord No. 99555 § 8, Ord. No. 101816)

35-423 Specific Use Authorization

The purpose of this section is to provide for certain uses which, because of their unique characteristics or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but which may, under the right set of circumstances and conditions be acceptable in certain specific locations. These uses are permitted only through the issuance of a specific use authorization permit by the city council after ensuring that the use can be appropriately accommodated on the specific property, will be in conformance with the comprehensive plan, can be constructed and operated in a manner which is compatible with the surrounding land uses and overall character of the community, and that the public interest and general welfare of the citizens of the city will be protected. No inherent right exists to receive a specific use authorization; such permits are a special privilege granted by the city council under a specific set of circumstances and conditions, and each application and situation is unique. Consequently, mere compliance with the generally applicable requirements may not be sufficient and additional measures may be necessary to mitigate the impact of the proposed development. Specific use authorizations are authorized by VTCA Local Government Code §§ 211.005 through 211.007.

(a) Applicability

The provisions of this section apply to any application for approval of a specific use authorization. Specific use authorizations are those uses which are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design and configuration and the imposition of conditions in order to ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses that are enumerated as specific use authorizations in a zoning district, as set forth in the use matrix (§ 35-311), shall be authorized by the city council. A specific use authorization shall not be required for a use allowed as a permitted use in a given zoning district.

(b) Initiation

An owner of real property within the city, or that owner's authorized representative, may, upon proof of ownership or agency, apply for a specific use authorization for that landowner's property by filing an application for a specific use authorization with the director of development services. The application shall include the material required in Appendix "B" of this chapter for a specific use authorization (§ 35-B111). An application shall not be deemed to have been filed until it is complete including all signatures, attachments, and the requisite filing fee.

(c) Completeness Review

The director shall review the application for specific use authorization for completeness in accordance with § 35-402 of this Article. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the zoning commission.

(d) Decision

When the director has certified that the application is complete, it shall be deemed received and shall be referred to the zoning commission for its review and decision.

(1) Type of Hearing.

The public hearing before the zoning commission and city council shall be conducted as a legislative hearing in accordance with § 35-404(d), above.

(2) Zoning Commission.

The zoning commission, after public notice in accordance with VTCA Local Government Code § 211.007(c), shall hold at least one public hearing on such application and as a result thereof shall transmit its final report to the city council. A public hearing shall be conducted, and a recommendation shall be submitted, by the zoning commission in accordance with the requirements of VTCA Local Government Code § 211.007. All applications for a change in zoning which have been considered by the zoning

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commission shall be presented by the applicant to the city council within six (6) months from the date of the commission's final consideration. The application shall be accompanied by the filing fee specified in Appendix "C". In the event the applicant fails to present the application for rezoning to the city council within the prescribed period, a new original application and fees shall be required. The new application may be submitted to the zoning commission for consideration after the six-month time period specified in subsection (f), below, is met.

(3) City Council.

After receipt of the recommendations of the zoning commission, the city council shall approve or deny the specific use authorization application in accordance with VTCA Local Government Code § 211.007. Should an applicant request that a zoning hearing be postponed after notice thereof has been given, the hearing will not be rescheduled until the applicant pays the postponement request fee specified in Appendix C. When a specific use authorization application is accompanied by an application for subdivision approval, such dual applications may be processed and reviewed concurrently in accordance with § 35-422 of this Article. If the proposed specific use authorization is inconsistent with the Master Plan, an application for an amendment to the Master Plan shall be submitted by the applicant. Amendments to the Master Plan may be considered concurrent with an application for a specific use authorization.

(4) Conditions.

In approving any specific use authorization, the city council may by resolution:

- A. Impose such reasonable standards, conditions or requirements, in addition to or which supersede any standard specified in this ordinance, as it may deem necessary to protect the public interest and welfare. Such additional standards may include, but need not be limited to, special setbacks, yard requirements, increased screening or landscaping requirements, area requirements, development phasing, and standards pertaining to traffic, circulation, noise, lighting, hours of operation and similar characteristics.
- B. Require that a performance guarantee, acceptable in form, content and amount to the city, be posted by the applicant to ensure continued compliance with all conditions and requirements as may be specified.
- C. At the time of granting special approval for athletic fields in residential, office or light commercial zones, the council may limit the duration of such use to a time period of not less than two (2) years, so that upon completion of such period as so established by the council, the use of property for such purpose must cease, unless a new special approval is granted by the council after

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following the same procedures involving notices and hearings as was followed originally and after receipt of recommendations from the zoning commission and a report from city staff concerning violations of any conditions or detrimental effects the use has had on adjacent property.

(e) Approval Criteria

As may be specified within each zoning district, uses permitted subject to specific use authorization review criteria shall be permitted only if the applicant demonstrates that:

- (1) The proposed specific use authorization shall be in compliance with all regulations of the applicable zoning district, the provisions of Article 5 of this chapter, and any applicable supplemental use regulations as set forth in Article 3, Division 7 of this chapter.
- (2) The proposed specific use authorization shall conform to the character of the neighborhood within the same zoning district in which it is located. The proposal as submitted or modified shall have no more adverse effects on health, safety or comfort of persons living or working in the neighborhood, or shall be no more injurious to property or improvements in the neighborhood, than would any other use generally permitted in the same district. In making such a determination, consideration shall be given to the location, type and height of buildings or structures, the type and extent of landscaping and screening on the site and whether the proposed use is consistent with any policy of the Master Plan which encourages mixed uses and/or densities.
- (3) Adequate utilities shall be provided as set forth in the utilities standards of this chapter.
- (4) Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.
- (5) The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.
- (6) The proposed use shall not be injurious to the use and enjoyment of the property in the immediate vicinity for the purposes already permitted nor substantially diminish or impair the property values within the neighborhood.
- (7) The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.
- (8) The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.

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- (9) The public interest and welfare supporting the proposed specific use authorization shall be sufficient to outweigh the individual interests which are adversely affected by the establishment of the proposed use.

(f) Subsequent Applications

An application for a specific use authorization may be withdrawn at any time, but if the application has been advertised in compliance with state law, an application requesting substantially the same use on all or part of the same described land shall not be reconsidered within one year of withdrawal. No application for a specific use authorization pertaining to any lot, parcel or portion thereof which requests the same use and same conditions shall be considered within one (1) year of a final decision denying the application.

(g) Amendments

An amendment is a request for any enlargement, expansion, increase in intensity, relocation, or modification of any condition of a previously approved and currently valid specific use authorization. Amendments shall be processed as follows:

(1) Non-Material And Insignificant (Minor) Modifications

Shifts in on-site location and changes in size, shape, intensity, or configuration of less than five percent (5%), or a five percent (5%) or less increase in either impervious surface or floor area over what was originally approved, may be authorized by the director, provided that such minor changes comply with the following criteria:

- No previous minor modification has been granted pursuant to this subsection;
- There will be no detrimental impact on any adjacent property caused by significant change in the appearance or the use of the property or any other contributing factor;
- Nothing in the currently valid specific use authorization precludes or otherwise limits such expansion or enlargement;
- The proposal conforms to the provisions of this article and is in keeping with the spirit and intent of any adopted Comprehensive plan.

(2) Major Amendments.

Any proposed amendment other than those provided for in paragraph (1) above shall be considered a major amendment of a previously approved and currently valid specific use

Authorization and shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original permit.

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(3) Non-Conforming Uses.

for an existing and currently valid specific use authorization which is no longer allowed as a specific use authorization in the zoning district in which it is located, the city council, upon receipt of an application, may review and approve an amendment to said permit, provided such amendment does not allow the use to be enlarged, expanded, increased in intensity, relocated, or continued beyond any limitation specified in the existing use permit or established in Article 7 - Nonconforming Uses and Vested Rights.

(h) Scope of Approval

once a specific use authorization is granted, such use may be enlarged, extended, increased in intensity or relocated only in accordance with the provisions of this section unless the city council, in approving the initial permit, has specifically established alternative procedures for consideration of future expansion or enlargement. The provisions of Article 7 relative to expansion of nonconforming uses shall not be construed to supersede this requirement unless the conditionally permitted use for which the permit was initially granted is in fact, no longer a use permitted as of right or as a specific use authorization in the zoning district in which located.

(i) Recording Procedures

A certified copy of all resolutions authorizing a specific use authorization pursuant to this section shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the county clerk.

(Ord. No. 98697 § 6)

35-424 Ministerial Permits or Approvals

The purpose of this section is to prescribe procedures for permits which do not require quasi-judicial or legislative notice or a public hearing. A public hearing is not required for permits set forth in this section for one or more of the following reasons:

- If required, public hearings have already been conducted relating to the permit application, and the permit application procedure is designed to ensure that the proposed use complies with a previously approved subdivision plat, master development plan, specific plan, comprehensive plan amendment, or conditional rezoning (e.g., building permit, certificate of occupancy).*

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- *The proposed use is permitted by right in the applicable zoning district (e.g., building permit, certificate of occupancy)*
- The proposed use is subject to expedited review in order to avoid an unconstitutional prior restraint on speech (e.g., sexually oriented businesses, signs) or because of federal law (e.g., telecommunications permits).

(a) Generally (Building Permits)**(1) Applicability.**

No development or development activity may be undertaken within any incorporated territory of the city unless all development permits applicable to the proposed development are issued in accordance with the provisions of this chapter. Permits are required for all development, unless otherwise excepted, to ensure compliance with the various adopted codes, standards and laws and to ensure consistency with the Master Plan and policies of the city.

(2) Initiation.

The applicant shall file a complete application for a building permit with the director of development services on a form prescribed by the development services department. If master development plan review is required in accordance with § 35-412 or 35-413 of this chapter, the approved master development plan shall be submitted with the application for a building permit. An application for a master development plan is available from the development services department. If the proposed development or development activity is not subject to master development plan review, the building permit application shall include the information required by Appendix "B" to this chapter. The director of development services shall assist the applicant in determining which materials are required for a submittal. Building permit applications are required and available from the development services department.

(3) Completeness Review.

The director of development services shall review an application for completeness within two (2) working days. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the board of adjustment.

(4) Decision.

When the required materials are submitted to each respective department, the development services department shall review its application for conformance with applicable building codes and for conformance with this chapter. Within five (5) working days of receipt of a complete application, the director of development services shall approve, approve with conditions, or deny the application for a building permit for purposes of this ordinance.⁴ Applications which are denied shall have the reasons for denial, in writing, attached to the application. If the director of development services fails to render a decision relating to the building permit application within this time period, the application shall be deemed approved. Such time periods shall not prevent the applicant and the city from agreeing to extend the city's response time contained in this subsection.

(5) Approval Criteria.

The building permit shall be issued by the director only if the application complies with all applicable provisions of this chapter and any approved specific use authorization conditional rezoning or master development plan.

(6) Subsequent Applications.

Not applicable.

(7) Amendments.

Any revision to an application for a building permit shall be processed in the same manner as the original application.

(8) Scope of Approval.

The building permit shall be valid for a period of 180 days in accordance with the International Building Code.

(9) Recording Procedures.

An application for a building permit shall be maintained in the files of the development services department provided, however, that the applicant shall have the responsibility to maintain an original signed copy of the approved building permit.

⁴ Note: this subsection does not apply to review of the building permit application for purposes of compliance with the building code in which case the development services department shall respond within 35 days.

(b) Certificate of Occupancy

Certificate of occupancy shall be issued in accordance with Chapter 6 of the city code and the International Building Code. No certificate of occupancy shall be issued if said development activities do not conform to the applicable zoning district or the approved master development plan, subdivision plat, or other previously issued permit or development order. The director of development services may issue a temporary certificate of occupancy pursuant to the building code. A certificate of occupancy shall not be required for a single-family dwelling unit, a child-care facility which does not require a state license, or a home occupation.

(c) Certificate of Occupancy for Sexually-Oriented Business (See Sexually Oriented Business Regulations)**(1) Applicability.**

No sexually-oriented business shall be commenced or established unless and until a certificate of occupancy has been issued by the director.

(2) Initiation.

The applicant shall file a complete application for a certificate of occupancy with the director of development services. The application shall include the information prescribed by Appendix "B", § 35-B117.

(3) Completeness Review.

See subsection (a)(3) of this section. The board of adjustment shall render its decision affirming or denying the application of the director within ten (10) days. If the board of adjustment fails to render its decision, the application shall be deemed complete and the director of development services shall process the application as provided in subsection (4), below.

(4) Decision.

The director of development services shall either issue or deny an application for a certificate of occupancy or a building permit for a sexually oriented business not more than thirty (30) business days subsequent to the date of the applicant's submission of an application therefore. If granted, the applicant shall be notified of such action by certified mail, return receipt requested. If denied, the applicant shall be notified of such action and the reason(s) therefore by certified mail, return receipt requested. The issuance of a certificate of occupancy shall not be withheld if the sexually oriented business is determined to be in compliance with all applicable sections of this chapter. The decision may be appealed pursuant to § 35-488 of this article.

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(5) Approval Criteria.

No certificate of occupancy for a sexually oriented business shall be issued or approved, and no sexually oriented business shall be established, except in conformance with the sexually oriented business regulations (§ 35-391) of this chapter.

(6) Subsequent Applications

No restriction on subsequent applications is imposed by this section.

(7) Amendments.

Amendments to an application for a certificate of occupancy authorizing a sexually oriented business shall be processed in the same manner as the original application.

(8) Scope of Approval.

The approval of a certificate of occupancy shall expire and become null and void unless a certificate of occupancy is obtained within a period of six (6) months following the issuance thereof.

(9) Recording Procedures.

See subsection (a)(9) of this section.

(d) Building Permit for Wireless Communications**(1) Applicability.**

No wireless communications system shall be commenced or established unless and until a building permit has been issued by the director of development services.

(2) Initiation.

See Subsection (a)(2) of this section.

(3) Completeness Review.

See Subsection (a)(3) of this section. The board of adjustment shall render its decision affirming or denying the application of the director of development services within thirty (30) days.

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(4) Decision.

The director shall render a decision approving or denying the application within thirty-five (35) days. If the director fails to render a decision within this time period, the application shall be deemed approved.

(5) Approval Criteria.

No wireless communications system shall be issued or approved, and no wireless communications system shall be established, except in conformance with the Radio, Television Antenna, and Wireless Communication Systems Regulations (§ 35-388) of this chapter.

(6) Subsequent Applications.

No restriction on subsequent applications is imposed by this section.

(7) Amendments.

Amendments to a wireless communications permit application shall be processed in the same manner as the original application.

(8) Scope of Approval.

The approval of a building permit for wireless communications shall expire and become null and void unless a certificate of occupancy is obtained within a period of six (6) months following the issuance thereof. The Building Permit shall expire upon the expiration of the certificate of occupancy.

(9) Recording Procedures.

See Subsection (a)(9) of this section.

(e) Temporary Use Permit**(1) Applicability.**

No temporary use subject to § 35-395 of this chapter shall be established unless and until a certificate of occupancy has been issued by the director.

(2) Initiation.

See Subsection (a)(2) of this section.

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(3) Completeness Review.

See Subsection (a)(3) of this section.

(4) Decision.

See Subsection (a)(4) of this section.

(5) Approval Criteria.

No certificate of occupancy shall be issued or approved, and no temporary use shall be established, except in conformance with the temporary use regulations (§ 35-395) of this chapter.

(6) Subsequent Applications.

No restriction on subsequent applications is imposed by this section.

(7) Amendments.

See Subsection (a)(7) of this section.

(8) Scope of Approval.

The approval of a certificate of occupancy for a temporary use shall expire within the time period prescribed in § 35-395 for the requested use, unless otherwise provided by the building code.

(9) Recording Procedures.

See Subsection (a)(9) of this section.

(f) Downtown Retail

The provisions of this subsection implement the following policy of the Master Plan: neighborhoods, Policy 5e: Encourage retail development downtown - establish an expedited permitting and inspections procedure for retail and other commercial finish-out projects.

(1) Applicability.

The provisions of this subsection shall apply to any retail use in the "D" downtown zoning district.

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(2) Initiation.

See Subsection (a)(2) of this section.

(3) Completeness Review.

See Subsection (a)(3) of this section. If an appeal is filed, the board of adjustment shall render its decision affirming or denying the application of the director within thirty (30) days.

(4) Decision.

The director of development services shall approve, approve with conditions, or deny the application for a building permit within thirty-five (35) days after it is certified to be complete.

(5) Approval Criteria.

See regulations for "D" zoning district and any supplemental use regulations for the use requested.

(6) Subsequent Applications.

No restriction on subsequent applications is imposed by this section.

(7) Amendments.

See Subsection (a)(7) of this section.

(8) Scope of Approval.

See Subsection (a)(8) of this section.

(9) Recording Procedures.

See Subsection (a)(9) of this section.

(g) Manufactured Home Park Plan**(1) Applicability.**

The director of development services shall not issue building or repair permits or certificates of occupancy for structures in manufactured home parks within the incorporated areas of the city until a plan has been approved in the manner prescribed by

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this division and duly filed in the office of the director of development services. The city will withhold all public improvements and services from manufactured home parks, including wastewater, water, gas and electric service until a manufactured home park has been approved in the manner prescribed by this subsection. Property to be developed as a manufactured home park shall be platted prior to obtaining any building permits or utility services. Such plats shall be annotated with a statement that it is a "Manufactured Home community" or a "recreational vehicle park," and shall annotate the plan with same name as the subdivision plat.

(2) Initiation.

Each applicant seeking approval of a manufactured home park shall submit a manufactured home park plan to the director of development services. The manufactured home park plan shall not be accepted unless it contains the information required by Appendix "B" to this chapter.

(3) Completeness Review.

See § 35-402(c) of this chapter.

(4) Decision.

Upon receipt of a manufactured home park plan, the director of development services shall distribute copies to various departments and agencies as the director deems appropriate for their review. The departments/agencies receiving copies of the plan shall submit their comments and recommendations for approval or disapproval in writing back to the director of development services within thirty (30) days of receipt of the plan.

Within forty-five (45) days of the date of submission of the manufactured home park plan, the director of development services shall submit the plan with his recommendation and comments received from other city departments and agencies to the planning commission for consideration. The planning commission may approve the plan as submitted, amend and approve the plan as amended or disapprove the plan.

(5) Approval Criteria.

The manufactured park plan shall comply with the manufactured home and recreational vehicle parks regulations (§ 35-382) of this chapter.

(6) Amendments.

After favorable action by the planning commission, minor changes to the plan that do not increase the density or affect platting, the general character or overall design of the manufactured home park plan may be approved by the director of development services.

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Major changes shall be submitted for consideration by the planning commission following the same procedure required for the original adoption of the plan. The planning commission shall interpret what constitutes a major change in the plan.

(7) Scope of Approval.

See subsection (a)(8) of this section. Subdivision plat approval may also be required prior to issuance of a building permit.

(8) Recording Procedures.

If the manufactured home park plan is approved, the director of development services shall retain one copy on file in the development services department and distribute one copy to the director of development services and other departments/agencies as appropriate.

(9) Permit for Temporary Use at Construction Sites.

- Authorization may be issued by the director of development services to permit an individual manufactured home to be temporarily located on a lot upon which a building permit has been previously issued for construction of any building or structure.
- A certificate of occupancy related to construction shall not be issued by the director of development services until the manufactured home has been removed from the premises and further, that the certificate of occupancy shall not be issued until the electrical connection which served the manufactured home has been removed from the lot in question.
- A temporary permit issued pursuant to this section shall be void upon issuance of the certificate of occupancy, or twelve (12) months after issuance of the building permit, whichever time is shorter.
- In any case in which construction is not completed within the twelve-month period, the director of development services, after due consideration and determination that active construction is being accomplished, may issue an extension of time for the temporary permit, not to exceed a six-month period.

(Ord. No. 98697 § 1, 4 & 6)

35-425 to 35-429 Reserved**DIVISION 4 - SUBDIVISIONS**

This article establishes the general rules and regulations governing plats, the subdivision of land, and the procedures for the extension of the city's streets, major thoroughfares and public utilities. It shall apply to all property within the city of San Antonio and its area of extraterritorial jurisdiction. The Home Rule Enabling Act, Article I, Section 3, and the city charter are authority

for the city to regulate the filing of subdivision plats within the city. The city is specifically granted the authority under the provision of Chapters 42, 43, and 212 of VTCA Local Government Code, to establish by ordinance rules and regulations governing plats and subdivisions of land within its corporate limits and area of extraterritorial jurisdiction, in order to promote the public health, safety and general welfare, and, in particular, to promote the safe, orderly, and healthful development of the city. In accordance with the city charter and VTCA, Local Government Code, Chapter 212, the city council hereby finds and determines that the procedures and standards of this ordinance will ensure that all plans or plats conform to the:

- General plan of the city, its streets, major thoroughfares, and public utility facilities, including those which have been or may be laid out, and*
- General plan for the extension of the city, its streets, major thoroughfares, water and sewer mains and other instrumentalities of public utilities within the city and its area of extraterritorial jurisdiction.*

for purposes of this division, the “general plan” means and refers to the Master Plan. The city council hereby finds and determines that the provisions of this code are consistent with the general plan.

The city council finds that in order to promote the public health, safety, and general welfare it is necessary to adopt this chapter:

- To establish general rules and regulations to govern plats and subdivisions of land within the corporate limits, and*
- To extend the general rules and regulations to govern plats and subdivisions of land to the area of extraterritorial jurisdiction, and*
- To establish procedures for implementing the major thoroughfare plan for existing and planned extension of the city's major thoroughfares and streets within the corporate limits of the city and the area of its extraterritorial jurisdiction, and*
- To establish plans and specifications governing extension of water and sewer mains and other instrumentalities of public utilities within the city and its area of extraterritorial jurisdiction.*

The city council finds that this chapter, through its establishment of a general regulatory system for development and the subdivision of land will provide for the safe, orderly and healthful development of the city.

(Ord No. 98697 § 6)

35-430 Applicability & General Rules**(a) Subdivisions Subject To This Section**

- (1) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of the city who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method. The division of a tract of land for any of the purposes specified herein does not require a transfer of title of all or part of the tract.

The owner of a tract of land situated within San Antonio's corporate limits or extraterritorial jurisdiction shall cause a plat to be made thereof upon a request for utility service or a building permit; or upon dividing the tract in two (2) or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts unless a specific exception to such requirement is provided for in section 35-430(c). A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance, or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method. A division of land under this subsection does not include a division of land into parts greater than five (5) acres, where each part has access and no public improvement is being dedicated. For purposes of this subsection, access shall mean a minimum frontage of twenty (20) feet on a platted public or private street.

- (2) The mechanism which is available to municipalities to become aware that a division of land has occurred or will occur is through a request for utility service and/or a building permit. VTCA, Local Government Code, Section 215.012 recognizes this fact by prohibiting cities, officials of cities, city-owned or city-operated utilities, and public utilities from serving or connecting any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land which has been issued by the planning commission indicating that a plan or plat is not required or that a plan or plat is required and has been approved by the commission.

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- (3) The above notwithstanding, this should not be construed as a limitation to the city's ability to require platting under Section 212.004 of VTCA, Local Government Code, when the city has substantial evidence that land is being subdivided in the manner set out in Section 212.004 of VTCA, Local Government Code. In such an instance, however, the specific exceptions set out in Subsection (b) herein shall remain applicable.

The City of San Antonio typically becomes aware that a division of land has occurred after the fact.

(b) Classification of Subdivisions

Both major and minor subdivisions are subject to the criteria for approval of subdivision plats, unless a specific provisions indicates that it does not apply to minor subdivisions. Different time limits are prescribed for the review and processing of major and minor subdivisions in order to reflect the level of complexity involved in review of the applications. Subdivisions shall be classified as follows:

(1) Minor Subdivisions [reference: VTCA § 212.0065(a)(2)].

A "minor subdivision " means any subdivision:

- A. Involving four (4) or fewer lots; and
- B. Fronting on an existing street; and
- C. Not involving the creation of any new street; and
- D. Not involving the extension of municipal utilities.

A requirement imposing sidewalk improvement and installation shall not constitute a major plat.

(2) Major Subdivisions.

A "major subdivision" means any subdivision other than a minor subdivision or a development plat.

(c) Plat Exceptions

In accordance with VTCA, Local Government Code, §§ 212.004 and 212.0045, the platting exceptions set forth below are established. Applicants exempt from subdivision plat approval may be subject to development plat approval requirements pursuant to § 35-435 of this article. The development services department may issue building permits, and public utility providers may provide utility service, on any unplatted parcel otherwise subject to this section for the following activities:

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- (1) The division of land into parts greater than five (5) acres within the city limits of the city of San Antonio, where each part has access and no public improvement is being dedicated, shall not require a subdivision plat. for purposes of this subsection, access shall mean a minimum frontage of fifteen (15) feet onto a public street or recorded access easement of fifteen (15) feet onto a public street. Public improvement shall mean creation of new streets, alleys or the extension of off site utilities or the installation of drainage improvements
- (2) The division of land into parts greater than ten (10) acres in the ETJ of the city of San Antonio, where the owner does not lay out part of the tract for streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, squares, parks, or other parts shall not require a subdivision plat.
- (3) Each tract greater than ten (10) acres in size is eligible for up to 3 single family utility connections provided each part is held under common ownership, each tract has access and no public improvement is being dedicated. for purposes of this subsection, access shall mean each tract has a minimum frontage of fifteen (15) feet on an existing public or platted private street or irrevocable access easement.
- (4) Uninhabitable uses that are to be retained in an undeveloped state shall not require a subdivision plat, provided: (1) the division does not create more than three (3) parcels, (2) each parcel contains a minimum area of five thousand (5,000) square feet, (3) the division does not involve the creation of any streets or alleys, and (4) no utility services shall be provided to the parcels, provided however, that the director of development services may exempt other uninhabitable uses from subdivision plat requirements upon determining that the uses are consistent with the intent of these provisions.

Commentary: The intent of this subsection is to allow the division of land without platting so long as the land remains undeveloped. Platting is required at the time utility services or building permits are requested unless one of the other plat exceptions applies.

- (5) Other uninhabitable uses including, but not limited to, pumps, oil wells, sheds, security lights, traffic devices, billboards, utility equipment huts, communication towers, or public infrastructure, or temporary field office shall not require a subdivision plat.
- (6) Public parks owned, operated, or maintained by a governmental entity shall not require a subdivision plat.
- (7) Temporary subdivision sales offices or seasonal type uses shall not require a subdivision plat.
- (8) Existing single-family dwelling units with electrical service in place or suspended shall not require a subdivision plat.

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- (9) Replacement of a pre-existing or existing single family dwelling unit or related accessory structure shall not require a subdivision plat.
- (10) The land for which a building permit or utility service is being requested is a lot or remaining portion of a lot previously platted under the jurisdiction of the county or city.
- (11) The division of any tract of land into parcels which are to be used solely for agricultural, mining, or quarrying purposes shall not require a subdivision plat, provided: (1) each parcel contains a minimum area of twenty (20) acres, and (2) no utility services shall be provided to an inhabitable use.
- (12) The provision of utility service to not more than three (3) dwelling units on an unplatted tract shall not require a subdivision plat provided all of the following requirements are met: (1) the tract is located outside the city limits within the extraterritorial jurisdiction of the city; (2) the tract has a minimum of fifteen (15) feet of frontage on a public street or a recorded access easement and the tract was created prior to July 1, 1990; (3) the tract has a minimum area of five thousand (5,000) square feet for each dwelling unit; (4) the tract is held under single ownership; (5) no major thoroughfare dedication is required; (6) no dwelling unit will be located within a regulatory floodplain; and (7) no utility extension is required. Pursuant to Subsection (c)(9)(5), the owner of an unplatted parcel abutting a designated major thoroughfare may voluntarily execute a street dedication instrument in accordance with form "S" in Appendix "C" in lieu of public dedication through platting when necessary. Any further subdivision shall require approval of a subdivision plat as provided herein.
- (13) Sewer & water service to existing buildings

If existing buildings on an unplatted tract are occupied, sewer and water services may be provided if "all" of the following conditions are met:

- A. The applicant provides evidence that non single family development and/or non single family improvements had received electrical service for a minimum continuous period of five years prior to the date of application for sewer and/or water services.
- B. The site is not subject to thoroughfare dedication,
- C. If applicable, existing building/s shall comply with the flood plain ordinance,
- D. Service is restricted to existing uses and,
- E. Impact fees are paid at time of application for service.

(d) Certificate of Determination [Reference: VTCA Local Gov't Code § 212.0115]

On the written request of an owner of land, an entity that provides utility service, or the city council, the director of development services shall make the following determinations regarding the owner's land or the land in which the entity or city council is interested that is located within the jurisdiction of the city:

- whether a plat is required under this division for the land; and
- if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the director of development services.

The request made under this subsection must identify the land that is the subject of the request and, if applicable, shall include evidence of on site sewage facilities review and approval from the respective county. If the director of development services determines under this subsection that a plat is not required, the director of development services shall issue to the requesting party a written certification of that determination. If the director of development services determines that

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a plat is required and that the plat has been prepared and has been reviewed and approved, the director shall issue to the requesting party a written certification of that determination. The director of development services shall make a determination within 20 days after the date it receives the request under this subsection and shall issue the certificate, if appropriate, within 10 days after the date the determination is made. for purposes of this subsection, term director of development services shall mean the director of development services in the case of an application for a building permit, or the utility provider in the case of an application for utility service.

The city council hereby delegates the ability to perform the responsibilities under this subsection to the director of development services or the applicable utility provider. A binding decision regarding subdivisions by the director under this subsection is appealable to the planning commission. A binding decision regarding building permits by the director or utility service by the applicable utility under this subsection is appealable to the board of adjustment.

(e) Conflict with County Regulations

This division shall not be applied in such a manner to amend or alter any rules, regulations, procedures or policies lawfully and officially adopted by the governing body of any county in which there exists territory contained within the area of extraterritorial jurisdiction of the city. In the circumstance where any rule, regulation, procedure or policy lawfully and officially adopted by the governing body of any county is less restrictive than those contained herein, then the standards of this chapter shall apply. for the purpose of this section, regulations shall be administered in accordance with an inter-local agreement executed by the city council with each respective county.

(f) Performance Agreements**(1) Performance Agreement Required.**

No plat shall be approved unless a performance agreement is provided and filed with the office of the city clerk that meets the requirements of § 35-436 of this chapter, unless no improvements are required.

(2) Site Improvement Time Extension Granted by Director of Development Services.

An applicant may request a performance agreement time extension provided that site improvement construction has started and is submitted with a written request and justification to the director of development services at least thirty (30) days prior to the time limit set out in the performance agreement. Each request shall be accompanied by a filing fee as specified in Appendix C. A guarantee, in an amount sufficient to cover the cost of remaining site improvements, shall be required if necessary in order for an extension to be granted. Such guarantee must be filed within thirty (30) days of the granting of the extension or the extension shall become null and void. Should the

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granting of such extension require the filing of any instruments, such as those set out in Appendix B, the fees for recording such instruments shall be paid by the subdivider to the director of development services. The director of development services is authorized to approve time extensions which meet the following criteria after consultation with all affected departments and utilities:

- **Sidewalk improvements.** A three (3) year time extension from the expiration of the performance agreement may be granted provided a plan indicating the uncompleted sidewalks and a time schedule for completion is submitted.
- **Other site improvements.** A one (1) year time extension from the expiration of the performance agreement may be granted provided at least seventy-five (75) percent of the required site improvements are completed.

Time extension requests which do not meet the above criteria or that are not approved by the director of development services shall be considered by the planning commission whose decision shall be final.

(3) Time Extension Granted by Planning Commission.

The planning commission may grant a time extension as provided in Subsection (2), above, if the subdivision plat does not have an expiration date and no progress has been made towards completion of the project, as defined in VTCA Local Government Code § 245.005. If no time extension is granted, the subdivision plat shall expire on May 11, 2004.

(Ord. No. 97568 § 2 & 4, Ord No. 98697 § 1 & 6, Ord. No. 99795, Ord. No. 101816)

35-431 Letters of Certification

The purpose of this section is to assist the applicant in obtaining necessary certifications needed for plat approval and to coordinate applications for subdivision approval with the standards and procedures required by this chapter.

(a) Applicability

Prior to filing an application for plat approval, the applicant shall secure letters of certification as required by this section.

(b) Initiation

(1) Certifying Departments.

A request for letters of certification and required items shall be filed by the applicant with the following departments (hereinafter "certifying departments"):

- A. department of public works
- B. department of planning (responsible to attest to cultural and historic resources, including but not limited to archaeology, architecture, and historic sites.)
- C. SAWS
- D. CPS Energy
- E. department of parks and recreation
- F. applicable county

(2) Referral.

The department of development services shall circulate the development plat to reviewing agencies and departments for identification of any rights-of-way and easements which may be required. If rights-of-way and/or easements are required, the applicant shall prepare instruments dedicating the rights-of-way/easements to the appropriate agencies and departments. The instruments shall be filed for record in the county deed records prior to approval of the development plat. In addition to the certifying departments, copies of the requests for plat review along with required information shall be distributed to the, Southwestern Bell Telephone, Cable Television, aviation department, development services department, San Antonio River Authority, San Antonio Development Agency, and Bexar County public works department. A letter of certification is not required from these departments.

(3) Copies to Development Services Director.

A copy of each request for a letter of verification shall be filed with the director of development services. The request for a Letter of Certification shall be in the form prescribed in Appendix "B". In order to track the application, the director of development services may assign a tentative tracking number for the letter of certification in the event that an application for subdivision plat approval is filed.

(4) Plat Number.

Prior to submitting a plat, replat, or amending plat for review by the city or any other agency, the applicant shall complete a plat application with the development services department and obtain a plat number.

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(5) Fees.

At the time an application for a plat number is submitted, the applicant shall pay to the city of San Antonio the platting fees specified in Appendix "C". The platting fees are not transferable to other properties nor are they refundable. However, refunds shall be granted if the fees collected are in excess of the amount required at the time of plat filing, and such excess is not due to a substantial design change from that which was indicated on the initial application, or if an error in the plat fee calculation is discovered. If a plat is not formally filed with the planning commission within two (2) years from the date of the plat application, the application expires and new platting fees shall be required. The following situations shall be exempt from platting fees:

- City of San Antonio projects which involve platting, and which are payable from the general fund.
- Permeable areas identified on a proposed plat such as private or public drains, conservation, landscape, or greenbelt easements.

(c) Completeness Review

Upon receipt of a request for letters of certification, the director of development services shall classify the request as a tentative major subdivision or a tentative minor subdivision. However, a plat that the director of development services finds is for the sole purpose of amending one or more building setback lines shall be submitted to the planning commission for consideration without review by any other agency. Such plat shall be referred to as a building setback line plat (BSL) and shall comply with all provisions of Chapter 212 of the Texas Local Government Code.

The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission. When a certifying department determines that the proposed plat or any of the required accompanying data does not conform with the requirements of this chapter, the certifying department shall so notify the applicant and director of development services. If the certifying department issues a letter of certification recommending disapproval of the proposed plat, the letter shall indicate the section and specific requirement of the regulations and the manner in which the request does not comply. The applicant may then revise the nonconforming aspects or may file the proposed request with the planning commission pursuant to § 35-432 of this chapter, with or without a request for a variance (§ 35-483 of this Article) provided, however, that if no variance request is submitted and approved and the application does not conform to this chapter, the application shall be denied.

(1) Tentative Minor Subdivisions.

Respective reviewing departments and agencies shall report to the director of development services whether the request for letters of certification is complete within five (5) days after submittal of the request.

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(2) Tentative Major Subdivisions.

Respective reviewing departments and agencies shall report to the director of development services whether the request for letters of certification is complete within ten (10) days after submittal of the request.

(d) Decision

The following procedures shall apply to the issuance of a letter of certification:

(1) LOC Technical Minor Subdivisions Plat Review.

After respective certifying departments and agencies have determined whether the request for letters of certification and required technical data is complete each certifying department shall issue a letter of certification within ten (10) working days. The applicant may at his/her option revise any nonconforming aspects. However, if any data are revised and resubmitted, the certifying department shall have an additional ten (10) days from the latest date of submission to issue or deny a revised letter of certification.

(2) LOC Technical Major Subdivisions Plat Review.

After respective certifying departments and agencies have determined whether the request for letters of certification and required technical data is complete each Certifying department shall issue a letter of certification within fifty (50) days. When a certifying department or agency determines that the proposed plat or any of the required accompanying data does not conform with the requirements of this chapter, the applicant may at his/her option revise any nonconforming aspects. If any data are revised and resubmitted, the certifying department/agency shall have up to fifty (50) days from the latest date of submission minus the number of days used for the initial review to issue or deny a letter of certification. In no case shall the certifying department have fewer than 10 days to review a resubmittal.

(3) Failure to Submit Letter of Certification.

If a letter of certification is not issued or denied within the time periods prescribed in subsections (1) or (2), above, the same shall be deemed issued and the applicant may submit an application for subdivision plat approval pursuant to § 35-432, below, without submitting the letter of certification.

(e) Approval Criteria

Approval criteria do not apply to this section because a letter of certification does not authorize any subdivision or development activity, and any action by the certifying department shall

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constitute only a recommendation as to whether the activities subject to the request for letters of certification would comply with the requirements of this chapter. The letters of certification request is a process for compiling a complete application for subdivision review.

(f) Subsequent Applications

Not applicable.

(g) Amendments

A letter of certification may be amended prior to filing an application for subdivision approval if the proposed amendment:

- Does not increase the number of lots subject to the application.
- Does not increase by more than five percent (5%) the lineal footage of roadways or the areas within the paved surface of the Street right-of-way.
- Does not reduce the amount of open space within the proposed subdivision.

(h) Scope of Approval

A letter of certification does not authorize the development or subdivision of land. Upon receipt of all letters of certification, the applicant may submit an application for subdivision plat approval.

Letters of certification shall remain valid for nine (9) months from the date of issuance by the certifying department/agency. After that time period, new or updated letters of certification shall be required to file a proposed plat with the planning commission.

The director's decision to classify a subdivision as major or minor is based upon information provided by the applicant. If the conditions relating to the classification of a subdivision as major or minor change (such as an increase in the number of lots or a subsequent application for a subdivision variance), the letters of certification shall become null and void and the applicant shall re-file the request for letters of certification.

(i) Recording Procedures

A letter of certification is not recorded. A letter of certification shall be maintained by the applicant and presented with the proposed application for subdivision plat approval.

(Ord. No. 97568 § 2, Ord. No. 98697 § 6, Ord. No. 99795)

35-432 Procedures for Subdivision Plat Approval**(a) Applicability**

The provisions of this section apply to any minor subdivision plat, major subdivision plat, or development plat.

(b) Initiation

A final submittal for subdivision plat approval may be filed after a letter of certification or a revised letter of certification has been issued by the certifying agencies. An application for subdivision plat approval shall not be filed until after a letter of certification or a revised letter of certification has been issued by each certifying agency. As required by VTCA § 212.008, an application for plat approval shall be filed with the planning commission. The director of development services shall serve as the agent for the planning commission for purposes of accepting plat applications pursuant to this chapter. for the purpose of the time limits established by Vernon's Local Government Code, Section 212.009, no plat shall be deemed filed with the planning commission until the plat, and all required items as set forth in this chapter, performance agreement as applicable, tax certificates, letters of certification and, if applicable, a request for a variance as specified in § 35-483 have been submitted to the planning commission. The plat application shall expire unless the plat application is heard by and approved by the director of development services or the planning commission within twenty-four (24) months from the date the plat application is submitted to the development services department.

(c) Completeness Review for Plat Approval

- (1) The director of development services shall determine whether letters of certification have been completed and whether the submittal contains the information required by Appendix "B" to this chapter. Completeness Review shall be governed by this section and § 35-402, to the extent not inconsistent with this section. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

- (2) **Review and Acknowledgement**

No plat shall be considered filed until review and acceptance of the Master Development Plan is completed.

(d) Decision

- (1) **Reviewing Agency.**

The reviewing agency for major plats is the planning commission. The reviewing agency for minor plats is the director of development services unless a variance or replat is requested, in which case the reviewing agency shall be the planning commission. The reviewing agency for plats located in the ETJ is the planning commission, however, if a

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proposed plat involves a variance the respective county shall also review and can deny the variance prior to issuing the applicant a letter of certification (LOC).

(2) Time Limit for Approval.

The reviewing agency shall act on a plat within thirty (30) days after the date the plat is filed. Plats shall not be deemed filed unless and until it is determined that complete information has been provided, as set forth in subsection (c) of this section. A plat is deemed approved unless it is approved or disapproved within the thirty (30) day period.

(3) Withdrawal of Application.

Once filed with the reviewing agency, a plat may be withdrawn provided that a written notice of withdrawal stating the reasons for the request is submitted to the director of development services. The thirty (30) day time limitation shall cease on the date that the notice is received by the director; however, the director may elect to present a withdrawal request to the planning commission for consideration. A plat application shall be void for all purposes if it is withdrawn by the applicant.

(4) Planning Commission Certification.

Pursuant to VTCA Local Government Code § 212.0115, the planning commission shall on approval of a plat issue to the applicant a certificate as set out in Appendix "B" stating that the plat or plan has been reviewed and approved by the commission.

(e) Criteria

No person shall subdivide any tract of land except in conformity with the provisions of this chapter. The plat shall be approved unless it is inconsistent with any of the criteria set forth in Article 5 of this chapter. The plat shall not be approved if it does not comply with any of the criteria set forth in Article 5 of this chapter. The decision making entity shall approve a plat if it conforms to:

- The Master Plan of the city and its current and future streets, alleys, parks, playgrounds, and public utility facilities;
- The transportation plan and major thoroughfare plan for the extension of major thoroughfares, streets, and public highways within San Antonio and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;
- Any applicable watershed master drainage plan adopted by the city; and
- The rules and regulations contained within Article 5 of this chapter.

(f) Subsequent Applications

There is no restriction on reapplication for subdivision approval.

(g) Amendments

Amendments to a subdivision plat shall be approved in the same manner as the original plat, except as otherwise provided for amending plats or replats herein.

(h) Scope of Approval**(1) Failure to Approve.**

An application for plat approval shall expire, and shall be void for all purposes if a plat is not approved in accordance with this chapter within two (2) years from the date that the plat number was assigned. Upon expiration of the plat application, a new plat number, application and fee shall be required if plat approval is still sought. Plat applications that have been submitted prior to September 1, 1997, and that have not been approved in accordance with this chapter, shall expire no later than May 15, 2005 unless otherwise prohibited by state law.

(2) Failure to Record.

If a plat is not recorded in the county deed and plat records within three (3) years from the date of plat approval or upon expiration of any time extension thereto, approval of such plat shall expire. Thereafter, should the applicant desire to record the plat, a new application shall be required in the same manner as for a previously unsubmitted plat. Prior to the three (3) year expiration date the applicant may request a time extension in accordance with 35-430(f) of this Article.

(3) Duration.

See § 35-711 of this ordinance.

(i) Recording Procedures**(1) Fees.**

At the time an application for a plat located within the city limits is submitted to the director of development services, the applicant shall deposit fees covering the cost of recording the plat. Such fees shall be in the form of a check made payable to the city of San Antonio.

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(2) Recordation.

The director of development services shall file for record an approved plat in the deed and plat records of the county within which the plat is located, provided the property owner consents in writing and the plat meets applicable conditions:

- A. No site improvements are required.
- B. All required site improvements have been completed and accepted by the director of development services.
- C. A performance agreement and a guarantee of performance as described in § 35-436 have been filed with the city clerk.
- D. All required impact and drainage fees have been paid and /or;
- E. outstanding liens imposed by the city on sites cleared of debris, removal of health hazards, over growth and or the razing of un-safe building(s) is resolved and approved by the director of finance.

(Ord. No. 98697 § 1 & 6, Ord. No. 99795, Ord. No. 101816)

35-433 Development Plat**(a) Applicability**

- (1) Pursuant to VTCA Local Government Code § 212.041, the city hereby chooses by ordinance to be covered by Subchapter B of VTCA Local Government Code Chapter 212.
- (2) A boundary survey is required for any person who:
 - A. the person is required or elects to file a subdivision plat within the city limits of San Antonio and
 - B. is not required to file a subdivision plat as required in §§ 35-431 and 35-432.
- (3) A development plat is not required where:
 - A. the person is required or elects to file a subdivision plat within the city limits of San Antonio or
 - B. one of the exceptions established in § 35-430(c)(2) – (c)(9) applies or
 - C. The tract is greater than five (5) acres, has access with a minimum frontage of fifteen (15) feet onto a public right of way, public street, platted private street or

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recorded irrevocable access easement, and which requires no public dedications. Providing further that the owner agrees not to further subdivide without filing a subdivision plat and a request for utilities shall not serve more than 3 dwelling units. Pursuant to Subsection (a)(2)(C), the owner of an unplatted parcel abutting a designated major thoroughfare may voluntarily execute a street dedication instrument in accordance with form "S" in Appendix "B" Section 35-B121 in lieu of public dedication through platting when necessary.

(b) Initiation

See § 35-432(b) of this chapter

(c) Completeness Review

The director of development services shall review the Development Plat for completeness as set forth in § 35-432(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision

The development plat shall be processed in the same manner as a minor plat, § 35-432(d) of this Article.

(e) Approval Criteria

The city adopts the following general plans, rules, and ordinances to govern development plats of land within the city and its extraterritorial jurisdiction to promote the health, safety, morals, and general welfare of the city and the safe, orderly, and healthful development of the city.

- (1)** The city's Master Plan, including all of its component plans.
- (2)** City Public Service Energy's plans and regulations pertaining to the extension of electric and gas service.
- (3)** San Antonio Water System's Waterworks Master Plan.
- (4)** The Unified Development Code (Chapter 35 of the City Code).
- (5)** Any applicable watershed Master Drainage Plan adopted by the city.

In addition see § 35-432(e) of this chapter.

(f) Subsequent Applications

See § 35-432(f) of this chapter.

(g) Amendments

See § 35-432(g) of this chapter.

(h) Scope of Approval**(1) Approval Does Not Constitute Dedication.**

The approval of a development plat is not considered an acceptance of any proposed dedication for public use or use by persons other than the owner of the property covered by the plat and does not impose on the city any duty regarding the maintenance or improvement of any purportedly dedicated parts until the city's governing body makes an actual appropriation of the dedicated parts by formal acceptance, entry, use, or improvement.

(2) Impact Fees.

New development may not begin on the property until all impact fees have been paid as required by § 35-507 of this chapter and/or the San Antonio Water System's Regulations for Water Service and the development plat is approved by the city.

(3) Building Permits / Septic Tank Approval.

The city, a county, or an official of another governmental entity may not issue a building permit or any other type of permit for development on lots or tracts subject to this section until a development plat is filed with and approved by the city. Applicants for development plat approval may also require approval by Bexar County for septic facilities or, in the extraterritorial jurisdiction of the city, a subdivision plat. Bexar County does not recognize development plats approved by the city. Accordingly, applicants may choose to file a subdivision plat pursuant to the major subdivision or minor subdivision procedures of this ordinance in lieu of filing a development plat.

(i) Recording Procedures

See § 35-432(i), above.

(Ord. No. 97568 § 2, Ord. No. 98697 § 6)

35-434 Plat Deferral**(a) Applicability**

The planning commission may grant a deferral of the requirement to plat for a subdivision of four (4) or fewer lots to allow a submittal for a building permit and/or utility services prior to plat approval. The time period for which the platting requirement may be deferred shall not exceed one hundred eighty (180) days. An application to defer platting may be filed if the following conditions are met:

- (1) The proposed plat is not part of a planned unit development and/or other city approved applicable plan.
- (2) The proposed project will not require a floodplain development permit.
- (3) The proposed project is not a replat which requires a public hearing involving notification.
- (4) Construction will not encroach onto an existing or proposed easement, right-of-way, or building setback.
- (5) The proposed plat will not require a variance to the Unified Development Code.
- (6) The proposed project is not contingent upon a change in zoning classification.
- (7) Construction will not occur over the Edwards Aquifer recharge zone.
- (8) All of the proposed lots have existing frontage and access to a public street.
- (9) All utilities are existing and no public improvements will be required with the proposed plat.
- (10) Does not involve closure or vacating of a public R.O.W.
- (11) Applicant shall secure on-site sewage facility approval from the applicable county if required.

(b) Initiation

To request a plat deferral, a plat application and a letter of application signed by the landowner or his authorized agent shall be filed with the director of development services. The letter and supporting documentation shall conform to the requirements of Appendix "B".

(c) Completeness Review

The director of development services shall review the plat deferral application for completeness as set forth in § 35-432(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision**(1) Review.**

The application letter and supporting data shall be reviewed by the department of development services and other appropriate departments/agencies within thirty (30) days of receipt of all required documents and fees. Upon receipt of the comments of the review agencies the director of development services shall forward the application to the planning commission. The planning commission may grant or deny a request to defer platting.

(2) Conditions.

All plat deferrals shall be subject to the following conditions:

- Recommendations of departments/agencies providing services prior to platting as approved by the planning commission and consistent with the criteria set forth in Article 5 of this chapter.
- The required subdivision plat shall be formally filed with the planning commission within one hundred eighty (180) days and shall be considered by the commission within thirty (30) days thereafter.
- No permanent electrical service or certificate of occupancy shall be issued until the plat is duly approved and recorded in the office of the county clerk.
- If no utility service or building permit is issued within one hundred eighty (180) days, the plat deferral shall become null and void and the platting fees shall not be returned.

(e) Approval Criteria

See § 35-432(e) of this chapter.

(f) Subsequent Applications

See § 35-432(f) of this chapter.

(g) Amendments

See § 35-432(g) of this chapter.

(h) Scope of Approval

A plat deferral may be revoked if any of the conditions set forth below apply. Prior to revoking a plat deferral, the commission shall formally consider and adopt a resolution authorizing the termination of electric service and/or revocation of the building permit until such time as a plat is approved and recorded.

(1) Deferral Conditions Not Applicable.

If any of the conditions relating to applicability of plat deferral, as set forth in subsection (a) hereto, are found and determined not to apply to the proposed application, or if the applicant requests a variance, the director may revoke the plat deferral. Revocation of a plat deferral shall render any building permit null and void. The applicant may appeal the decision of the director to the planning commission within thirty (30) days after notification of the revocation of a plat deferral.

(2) Failure to submit plat.

If a plat is not submitted within one hundred thirty-five (135) days of the date the plat deferral was granted by the planning commission, the director of development services shall notify the applicant by certified mail that failure to file a plat within forty-five (45) days may result in the termination of electric service and/or revocation of the building permit. If the applicant believes such action is unjustified, he may appeal to the planning commission at any time during the forty-five (45) day notice period.

(i) Recording Procedures

See § 35-432(i) of this chapter.

(Ord. No. 99795)

35-435 Subdivision Plat Variances

See § 35-483 of this chapter for subdivision plat variances.

(Ord. No. 96564 § 1, Ord. No. 98697 § 6)

35-436 Administrative Exceptions

The city hereby finds and determines that some standards of this code are routinely modified due to exceptional circumstances such as difficult terrain and unique topographical conditions. The city finds and determines that the granting of such exceptions is in the public interest, but that administrative review is needed in order to ensure that the spirit and intent of this ordinance is preserved. Accordingly, these procedures permit administrative exceptions to be granted as part of the subdivision plat approval process without the need for a variance. Applicants who are denied an administrative exception may then seek a variance in accordance with § 35-483 of this Article.

(a) Applicability

The director of development services may grant an administrative exception from the requirements of Article 5 of this code as provided in 35-501. However, when the request involves deviation from applicable design standards in the extraterritorial jurisdiction (ETJ), approval from the applicable county is required.

(b) Initiation

An exception shall be requested as part of the application for a subdivision plat approval. The exception shall be specifically labeled in the application with a specific reference to this section of the ordinance, along with any supporting documentation justifying the need for an exception.

(c) Completeness Review

The application for an exception shall be reviewed for completeness concurrent with the completeness review for the subdivision plat or development plat.

(d) Decision

The exception shall be approved, denied, or approved with conditions as part of the decision approving, denying, or approving with conditions the application for approval of a subdivision plat or development plat.

(e) Approval Criteria.

The exception shall be granted if the reviewing agency finds and determines that:

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1. The exception will not be contrary to the spirit and intent of this code and the specific regulations from which an exception is requested; and
2. The applicant has taken all practicable measures to minimize any adverse impacts on the public health, safety and public welfare; and
3. Under the circumstances, the public interest underlying the proposed exception outweighs the public interest underlying the particular regulation for which the exception is granted; and
4. The proposed exception complies with all other applicable standards of § 35-432(e) to the extent practicable.

(f) Subsequent Applications.

See § 35-432(f) of this chapter.

(g) Amendments

See § 35-432(g) of this chapter.

(h) Scope of Approval.

See § 35-432(h) of this chapter.

(i) Recording Procedures

See § 35-432(i) of this chapter.

(Ord. No. 96564 § 1, Ord. No. 98697 § 1, Ord. No. 99795)

35-437 Performance Agreement

When site improvements, other than gas and electric lines, are required in conjunction with a plat, an instrument to ensure construction of the site improvements shall be executed by the applicant and filed with the planning commission together with the plat. Such instrument shall be substantially the same as form "F" in Appendix "B", § 35-119(f) and shall be filed with the city clerk's office when a guarantee of performance is posted.

(a) Guarantee of performance

As is provided for in § 35-432(i), an approved plat may be filed for record before the required site improvements are completed if one of the following guarantees of performance is filed with the city clerk within three (3) years after the plat has been approved by the planning commission: a performance bond, a trust agreement, a letter of credit, or a cash or cashier's check.

(1) Performance Bond.

A performance bond shall be executed by a surety company license to do business in the state in an amount equal to the cost estimate, as approved by the director of development services, of all uncompleted and unaccepted improvements required by these regulations (other than gas and electric lines), with the condition that the subdivider shall complete such improvements and have them accepted by the director of development services within three (3) years from the date of plat approval. A performance bond shall be substantially in the same form as the form "H" set out in Appendix "B", § 35-B120 (f). The director of development services is authorized to sign the bond instrument on behalf of the city and the city attorney shall approve the same as to form.

(2) Trust agreement.

The subdivider shall cause to be placed in a trust account on deposit in a bank or trust company or with a qualified escrow agent selected by the subdivider and approved by the director of development services a sum of money equal to the cost estimate, as approved by the director of development services, of all uncompleted and unaccepted site improvements (other than gas and electric lines) required by these regulations. The trust account shall be established by agreement which shall be substantially in the same form as form "J" set out in Appendix "B", § 35-B120 (f). The director of development services is authorized to sign the agreement on behalf of the city and the city Attorney shall approve same as to form.

(3) Letter of credit.

The subdivider shall provide an irrevocable letter of credit in an amount equal to the cost estimate, as approved by the director of development services, of all uncompleted and unaccepted site improvements (other than gas and electric lines) required by these regulations. The letter of credit, properly executed, shall be substantially in the same form

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as form "K" set out in Appendix "B", § 35-B120 (f). The director of development services is authorized to sign the agreement on behalf of the city and the city attorney shall approve same as to form.

(4) Cash or Cashier's Check.

The subdivider shall provide to the city cash or a cashier's check in an amount equal to the cost estimate as approved by the director of development services, of all uncompleted and unacceptable site improvements (other than gas and electric lines) required by these regulations. Upon completion of the required site improvements and their acceptance by the director of development services, the amount will be refunded to the subdivider by the city.

(b) Substituting Guarantees

When a subdivider has given security in any of the forms hereinabove provided, and when fifty (50) percent of the required site improvements has been completed and has been accepted by the director of development services, or whenever any segment or segments of the required site improvements have been completed and have been accepted by the director of development services, the subdivider may substitute for the original guarantee, a new guarantee in an amount equal to the cost of the remaining site improvements. The cost estimate shall be approved by the director of development services. Such new guarantee need not be in the same form as the original guarantee so long as such guarantee is one that is listed in subsection (a). However, in no event shall the substitution of one security for another in any way change or modify the terms and conditions of the performance agreement or the obligation of the subdivider as specified in the performance agreement.

(c) Supplementary guarantees

Supplementary guarantees may be required as follows:

(1) Renewal.

one (1) year from the date of plat recordation, and annually thereafter until the expiration of the three (3) year period from the date of plat approval, the director of development services shall review the estimated cost of completing such site improvements as are not then completed and determine the adequacy of the existing performance guarantee. Should the director of development services determine that the sum set out in the performance guarantee is inadequate to provide for the completion of the uncompleted site improvements at the then prevailing construction costs, he shall require a substitute guarantee to cover the newly estimated cost or a supplemental guarantee to cover the additional sum needed for completion.

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(2) Performance Guarantee.

If a subdivider submits an original performance guarantee after a period of two (2) years has elapsed from the date on which a plat was approved by the planning commission, the actual cost estimate of completing the uncompleted site improvements shall be increased by an amount, based upon a locally recognized construction cost index as approved by the director of development services, required to cover an estimated inflationary increase in the cost during the duration of the period covered by the performance guarantee.

(3) Failure to Provide Guarantee.

Should the subdivider fail to provide the necessary additional of substitute guarantee within thirty (30) days of a request for same by the director of development services, the director of development services shall refuse to accept from such subdivider a performance guarantee under any form which is related to the plat of a subdivision subsequently filed with the planning commission in which such subdivider has a principal or subsidiary interest.

(d) Release Upon Completion of Site Improvements

Upon completion of the required site improvements and acceptance by the director of development services and county engineer if the site is located in the ETJ, an instrument releasing the applicant from the provisions of the performance agreement shall be filed by the director of development services in the office of the city clerk. Such release shall be substantially the same as form "L" in Appendix "B", § 35-B120 (f). If the necessary permits required to complete the site improvements (including, but not limited to, floodplain development permits) are denied by the city and are no longer required to serve the lots within the subdivision, the director of development services shall approve and notify the city clerk to release the performance agreement and guarantee as provided herein.

(Ord. No. 96564 § 1, Ord. No. 98697 § 1 & 6, Ord. No. 99795)

35-438 Acceptance of Dedication

Pursuant to VTCA Local Government Code § 212.011, the approval of a plat shall not be considered an acceptance of any proposed dedication and does not impose on the city any duty regarding the maintenance or improvement of any dedicated parts until the appropriate city authorities make an actual appropriation of the dedicated parts by entry, use, or improvement. The disapproval of a plat shall be considered a refusal by the city of the offered dedication indicated on the plat.

(Ord. No. 96564 § 1, Ord. No. 98697 § 6)

35-439 Owner-Initiated Plat Vacation**(a) Applicability**

The provisions of this establish a process for approving the elimination of a plat, in whole or in part. Pursuant to VTCA Local Government Code § 212.013, the proprietors of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat. If lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat.

(b) Initiation

The owner or owners of lots in any approved subdivision, including the developer, shall initiate a plat vacation by filing a petition and declaration with the director of development services to vacate the plat with respect to their properties. The Petition shall conform to the requirements of Appendix "B". The instrument shall be the same as form M set out in Appendix "B", § 35-B120 (f). If the subdivider so desires, the vacating declaration and an application requesting resubdivision of the plat may be filed and processed simultaneously. Upon filing the vacating declaration, a filing fee as specified in Appendix "C" shall be paid to the city of San Antonio in addition to the required recordation fee. The filing fee shall not be required if the vacating declaration is filed and processed simultaneously with a resubdivision plat.

(c) Completeness Review

The director of development services shall review an application for a plat vacation as provided in § 35-432(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision

The petition may be approved, conditionally approved or disapproved at a regular public meeting of the planning commission subject to the criteria in subsection (e), below.

(e) Approval Criteria

The planning commission shall approve the petition for vacation on such terms and conditions as are reasonable to protect public health, safety and welfare; but in no event may the planning commission approve a petition for vacation if it will materially injure the rights of any nonconsenting property owner or any public rights in public improvements unless expressly agreed to by the agency with jurisdiction over such improvements.

(f) Subsequent Applications

Not applicable.

(g) Amendments

Not applicable.

(h) Scope of Approval

on the execution and recording of the vacating instrument, the vacated plat has no effect. A plat may be resubdivided upon vacation of the original plat. The resubdivision of the land covered by a plat that is vacated shall be platted in the same manner as is prescribed by this chapter for an original plat. In addition a copy of the vacating declaration form (§ 35-B115 (d)) shall be submitted with the resubdivision plat.

(i) Recording Procedures

The county clerk shall write legibly on the vacated plat the word "vacated" and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded.

(Ord. No. 96564 § 1)

35-440 Replatting Without Vacating Preceding Plat**(a) Applicability**

Pursuant to VTCA § 212.014, a replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- (1) is signed and acknowledged by only the owners of the property being replatted;
- (2) is approved, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard, by the municipal authority responsible for approving plats; and
- (3) does not attempt to amend or remove any covenants or restrictions.

(b) Initiation

A subdivider wishing to replat a previously approved and recorded plat shall file with the department of Development Services the proposed replat in accordance with Section 35-431.

(c) Completeness Review

The director of development services shall review and application for replat in accordance with § 35-432(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision

Pursuant to VTCA Local Government Code § 212.014, a replat shall be approved by the planning commission in the same manner as a major subdivision.

(e) Approval Criteria

The replat shall be approved unless it is inconsistent with any of the criteria set forth in Article 5 of this ordinance. The replat shall not be approved if it does not comply with any of the criteria set forth in Article 5 of this ordinance.

(f) Subsequent Applications

There is no restriction on subsequent applications for a replat.

(g) Amendments

A replat may be amended by filing a new replat. The replat shall be processed in the same manner as the original replat.

(h) Scope of Approval

Approval of a replat shall be restricted to the matters described in subsection (e) of this section, and shall confer no additional rights upon the applicant.

(i) Recording Procedures

See § 35-432(i) of this chapter. The replat may be recorded and is controlling over the preceding plat without vacation of that plat.

(Ord. No. 96564 § 1, Ord. No. 98697 § 6)

35-441 Amending Plats

The purpose of this section is to provide a streamlined and efficient process for the combination of parcels or the replat of parcels. Pursuant to VTCA Local Government Code § 212.0045, a municipality need not require platting for every division of land otherwise within the scope of the state subdivision enabling legislation. VTCA Local Government Code § 212.0065 authorizes the city to authorize amending plats to be approved administratively.

(a) Applicability

Pursuant to VTCA Local Government Code § 212.016, a plat may be amended, and the director may issue an amending plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

- (1) to correct an error in a course or distance shown on the preceding plat;
- (2) to add a course or distance that was omitted on the preceding plat;
- (3) to correct an error in a real property description shown on the preceding plat;
- (4) to indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
- (5) to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
- (6) to correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;

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- (7) to correct an error in courses and distances of lot lines between two adjacent lots if:
 - A. both lot owners join in the application for amending the plat;
 - B. neither lot is abolished;
 - C. the amendment does not attempt to remove recorded covenants or restrictions; and
 - D. the amendment does not have a material adverse effect on the property rights of the other owners in the plat;
- (8) to relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
- (9) to relocate one or more lot lines between one or more adjacent lots if: (A) the owners of all those lots join in the application for amending the plat; (B) the amendment does not attempt to remove recorded covenants or restrictions; and (C) the amendment does not increase the number of lots;
- (10) to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if: (A) the changes do not affect applicable zoning and other regulations of the city; (B) the changes do not attempt to amend or remove any covenants or restrictions; and (C) the area covered by the changes is located in an area that the municipal planning commission or other appropriate governing body of the municipality has approved, after a public hearing, as a residential improvement area; or
- (11) to replat one or more lots fronting on an existing street if: (A) the owners of all those lots join in the application for amending the plat; (B) the amendment does not attempt to remove recorded covenants or restrictions; (C) the amendment does not increase the number of lots; and (D) the amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.
- (12) to establish a no build easement
- (13) to establish fire lanes

(b) Initiation

A subdivider wishing to amend an approved plat shall file with the development services department the amending plat, together with a copy of the plat being amended and a statement detailing the amendments being proposed. The director of development services will determine

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the extent to which the amending plat will require review by the various departments and agencies of the city. If the plat being amended has been recorded, the additional recordation fee shall be deposited with the city at the time of plat filing.

(c) Completeness Review

The director of development services shall review an application for an amending plat in accordance with § 35-432(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision

Pursuant to VTCA Local Government Code § 212.016, notice, a hearing, and the approval of other lot owners are not required for the approval and issuance of an amending plat. The amending plat shall be processed by the director in the same manner as a minor plat. If the plat being amended has been recorded, the amending plat shall be clearly marked "Amending plat of (____ plat number and name ____). This plat amends the plat previously recorded in the plat and deed records of _____ County, Volume _____, Page _____." The amending plat shall then be recorded if all requirements have been met. If the plat being amended has not been recorded, the amending plat may be approved by the director of development services. Upon approval by the director, the amending plat shall be annotated with the following statement: "This plat includes amendments approved by the director of development services."

(e) Approval Criteria

The amending plat shall be approved unless it is inconsistent with any of the criteria set forth in Article 5 of this ordinance. The amending plat shall not be approved if it does not comply with any of the criteria set forth in Article 5 of this ordinance.

(f) Subsequent Applications

There is no restriction on subsequent applications for an amended plat.

(g) Amendments

An amended plat may be amended by filing a new amended plat. The amended plat shall be processed in the same manner as the original amended plat.

(h) Scope of Approval

Approval of an amended plat shall be restricted to the matters described in subsection (e) of this section, and shall confer no additional rights upon the applicant.

(i) Recording Procedures

See § 35-432(i) of this chapter. The amending plat may be recorded and is controlling over the preceding plat without vacation of that plat.

(Ord. No. 96564 § 1, Ord. No. 98697 § 6)

35-442 Replatting of Antiquated Plats**(a) Applicability**

for purposes of this section, any subdivision platted prior to June 14, 1927, the effective date of VTCA, Local Government Code Chapter 212, shall not be considered a plat under that chapter and a replat of such a subdivision shall be considered an original plat and shall be subject to the same notice requirements as a minor subdivision plat.

(b) Initiation

An application for a replat shall be submitted to the director. The plat shall be signed and acknowledged by only the owners of the property being resubdivided. The plat shall be annotated with a certificate the same as form "P", § 35B-120 in Appendix "B" to this chapter.

(c) Completeness Review

The director of development services shall review an application for replat in accordance with § 35-432(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision

The replat must be approved by the planning commission after a public hearing. The notification procedures for a minor subdivision shall apply.

(e) Approval Criteria

A subdivision or part of a subdivision may be replatted without vacation of the preceding plat if the conditions listed below are met.

- The procedures and specifications pertaining to plats continued in this article shall apply.
- The replat shall not attempt to amend or remove any covenants or restrictions.

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(f) Subsequent Applications

See § 35-432(f) of this chapter

(g) Amendments

See § 35-432(g) of this chapter

(h) Scope of Approval

See § 35-432(h) of this chapter

(i) Recording Procedures

See § 35-432(i) of this chapter

(Ord. No. 96564 § 1, Ord. No. 98697 § 6)

35-443 Replats Subject to Low-Density Zoning

[Reference: Texas Local Gov't Code § 212.015]

(a) Applicability

The following procedures of this section shall apply if during the preceding five (5) years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two (2) residential units per lot, or if any lot in the preceding plat was limited by deed restrictions to residential use for not more than two (2) residential units per lot.

(b) Initiation

The subdivider shall provide to the director of development services written notice of an intention to file with the planning commission a replat to which the limitations stated above apply.

(c) Completeness Review

The director of development services shall review an application for replat in accordance with § 35-432(c) and 35-442 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision

- (1) The director of development services shall provide notice of the public hearing required herein prior to the fifteenth (15th) day before the date of the hearing by publication in an official newspaper or a newspaper of general circulation in the county and by written notice, with a copy of VTCA, Local Government Code section 212.015(c) attached, to the owners of lots that are in the original subdivision within two hundred (200) feet of the lots to be replatted. The written notice shall be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the city limits.
- (2) If the proposed replat requires a variance and written protests signed by the owners of at least twenty (20) percent of the area of the lots or land within two hundred (200) feet of the lots to be replatted, but within the original subdivision, are filed with the planning commission prior to the close of the public hearing, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the planning commission. In computing the percentage of land area within two hundred (200) feet of the property to be replatted, the area of streets and alleys shall be included.
- (3) In approving a replat which is protested in accordance with Subsection (c)(3) above, the commission may require that the name of the replat be the same as the original subdivision. In such instances, the replatted area shall continue to be considered as part of the original subdivision for future notification purposes.
- (4) Compliance with Subsection (c) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat. However, the replat shall be annotated with a certificate the same as form "Q", § 35B-120 in Appendix "B" to this chapter.

(e) Approval Criteria

See § 35-432(e) of this chapter.

(f) Subsequent applications

See § 35-432(f) of this chapter.

(g) Amendments

See § 35-432(g) of this chapter.

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(h) Scope of Approval

A replat must be filed with the planning commission within six (6) months of the date of the public hearing. If the replat is not filed within six (6) months, a new public hearing shall be required.

(i) Recording Procedures

See § 35-432(i) of this chapter. The replat shall be annotated with a certificate the same as form "O", § 35B-120 in Appendix "B" to this chapter.

(Ord. No. 96564 § 1 & 3, Ord. No. 98697 § 6, Ord. No. 101816)

35-444 to 35-449 Reserved**DIVISION 5 - HISTORIC & DESIGN REVIEW**

This division implements the following policy of the Master Plan:

- *Urban Design, Policy 1b: Adopt an urban design review process for giving physical design direction to urban growth, conservation and character.*
- *Goal 2 Preserve and enhance the city's historic resources.*

35-450 General Rules**(a) Area of Jurisdiction**

A certificate of appropriateness is required and shall be secured by a party prior to the issuance of a permit from the department of development services before said party will be allowed to undertake activities affecting a designated historic landmark, property within a designated historic district, a state archaeological landmark, a recorded Texas historical landmark, property within a National Register Historic District, property listed on the National Register of Historic Places, a National Historic Landmark, property within the river improvement overlay district, public property, public rights-of-way, or public art.

(b) “Commission” Defined

for purposes of this division, the term “commission” refers to the historic and design review commission.

35-451 Certificate of Appropriateness**(a) Applicability**

The provisions of this section apply to the following activities:

- (1) Construction and reconstruction,
- (2) Alteration, additions, restoration and rehabilitation,
- (3) Relocation,
- (4) Stabilization,
- (5) Signage,
- (6) Landscaping,
- (7) Construction or reconstruction of a parking lot,
- (8) Construction or reconstruction of an appurtenance,
- (9) Acquisition or deaccessioning of artwork,
- (10) Demolition, and
- (11) Lighting, furniture and seating plan, and awnings and umbrellas within the River Walk area and in the public right-of-way.

(b) Initiation

Applications for certificates of appropriateness shall be referred to the commission by the historic preservation officer. In the case of an application for demolition, the commission shall be guided by procedures specified in §§ 35-614 to 35-617 of this chapter.

(c) Completeness Review

The director shall review an application for a certificate of appropriateness in accordance with § 35-402 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the historic and design review commission.

(d) Decision**(1) Commission Review.**

The commission shall make its written recommendations within sixty (60) days after the historic preservation officer's receipt of the completed application, which shall include all required materials and documents, from the applicant. If the commission does not make its recommendation within a sixty-day period, the application shall be deemed recommended by the commission for approval and a certificate showing the filing date and the failure to take action on the application within sixty (60) days shall be issued by the director upon consultation with the historic preservation officer on the applicant's demand. The sixty-day time period may be extended with the concurrence of the applicant if additional time is required for the preparation of information or for research required by the commission. Such extension shall suspend the running of the sixty-day period within which the commission is required to make its recommendation.

(2) Planning Director Review.

Upon receipt of the recommendation by the commission, the director of planning shall implement such recommendation by notifying the applicant within ten (10) days from receipt of such recommendation that his application has been approved, conditionally approved, or disapproved. The Director shall also submit a copy of the decision to the commission for its information, to the department of development services for issuance of permits, and to other departments, as applicable. The director shall assure the decision is based on the criteria considered by the commission in the determination as to issuance or denial of any certificate.

(3) Appeal.

An applicant for a certificate may appeal the decision of the director to the board of adjustment within thirty (30) days after receipt of notification of the director's action. The applicant shall be advised by the city clerk of the time and place of the hearing at which the appeal will be considered and shall have the right to attend and be heard as to the reasons for filing the appeal. In determining whether or not to grant the appeal, the board of adjustment shall consider the same factors as the commission, the report of the commission, and any other matters presented at the hearing on the appeal. If the board of adjustment approves the application, it shall direct the director of development services

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to issue a certificate for the work covered. If the board of adjustment disapproves the application, it shall direct the director of development services not to issue such certificate. Such disapproval may indicate what changes in the plans and specifications would meet the conditions. Upon receipt of the written disapproval of the board of adjustment, the director of development services shall immediately advise the applicant and the commission in writing.

(e) Approval Criteria (*See Article 6 of this Ordinance.*)

(f) Subsequent applications

In the case of disapproval of an application by the board of adjustment, a new application for the same work shall not be resubmitted for consideration until one year has elapsed from the date of disapproval unless the indicated changes in the plans and specifications required to meet the conditions have been incorporated into the new application. The commission, by a two-thirds ($\frac{2}{3}$) majority of its membership, may waive the aforementioned time limitation if the application presents new substantial evidence. If such waiver is granted, a new application shall be filed with the historic preservation officer.

(g) Amendments

A certificate of appropriateness shall be amended in the same manner as the approval of the original application.

(h) Scope of Approval

A certificate of appropriateness shall authorize only those modifications to a building or structure requested in the application and approved as provided herein. Following commission approval of final design, defined as eighty (80) percent working drawings, and issuance of a certificate, an applicant must secure permits within one hundred eighty (180) days and start work within one hundred eighty (180) days of issuance of permits or the certificate becomes null and void and of no force or effect. Thereafter, the applicant must reapply for reissuance of a certificate to the historic preservation officer. The historic preservation officer will determine whether significant changes have occurred to the final design. If the historic preservation officer determines that significant changes have occurred, then plans must be resubmitted to the commission for rehearing and action.

(i) Recording Procedures

A certificate of appropriateness need not be recorded, but shall be maintained and displayed by the applicant on the premises. The historic preservation officer shall also retain a copy of the certificate of appropriateness for public inspection.

(Ord. No. 95352 § 4, Ord. No. 98697 § 1, 4 & 6)

35-452 Certificate of Appropriateness for Ordinary Repair and Maintenance

(a) Applicability

The provisions of this section apply to a certificate of appropriateness requesting ordinary repair and maintenance.

(b) Initiation

Applications for a certificate of appropriateness to authorize ordinary maintenance and repair shall be submitted to the historic preservation officer.

(c) Completeness Review

The planning director shall review an application for a certificate of appropriateness in accordance with § 35-402 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the historic and design review commission.

(d) Decision

Applications for ordinary repair and maintenance may be approved by the director of planning upon recommendation from the historic preservation officer. The decision may be appealed in the same manner as set forth in § 35-481.

(e) Approval Criteria *(See Article 6, § 35-611 of this chapter.)*

(f) Subsequent applications *(See § 35-451(f) of this chapter.)*

(g) Amendments *(See § 35-451(g) of this chapter.)*

(h) Scope of Approval *(See § 35-451(h) of this chapter.)*

(i) Recording Procedures *(See § 35-451(i) of this chapter.)*

(Ord. No. 98697 § 6)

35-453 Permits Affecting Property Recommended by the Historic Design and Review Commission for Historic Designation**(a) Applicability**

When an application is made on a building, object, site or structure recommended by the commission for designation as an historic landmark or of a building, object, site, structure or unimproved land located within an area recommended by the commission for designation as an historic district, the applicant shall follow procedures outlined in this subdivision until the final disposition of the recommendation by city council.

(b) Initiation

The applicant may apply to the commission for review of a proposed project prior to final city council action on the designation request.

(c) Completeness Review

The planning director shall review the application in accordance with § 35-402 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the historic and design review commission.

(d) Decision

The commission shall review the application using criteria set forth in this section and shall follow all regulations and procedures used to review historic landmarks and properties in historic districts. Certificates may be issued following commission approval. Should the commission deny the applicant's request, the applicant may appeal to city council following procedures in this subdivision.

(e) Approval Criteria

The city council may authorize issuance of a certificate on a resource recommended by the commission for designation if, by formal resolution, it deems the certificate necessary for public health, welfare, or safety.

(f) Subsequent Applications *(Not applicable.)***(g) Amendments** *(Not applicable.)*

(h) Scope of Approval

Should the city council fail to designate the recommended building, object, site, structure or cluster as an historic landmark or the recommended area as an historic district, the director of development services shall issue permits requested providing all city code requirements are met.

(i) Recording Procedures

See § 35-451(i) of this chapter.

(Ord. No. 98697 § 1, 4 & 6)

35-454 Review of Plans for City-Owned Properties**(a) Applicability**

The city of San Antonio and all of its boards, agencies and utilities and those corporations, firms or individuals engaged in the furnishing of telephone service, cable television, wireless service, or other public utilities to the public, shall submit plans for any construction, reconstruction, alteration, restoration, rehabilitation, relocation, stabilization, or demolition affecting any public building, object, site, structure, accessory building, fence, or other appurtenance in any city owned property or any activity which may upon completion obstruct any designated vista for review according to procedures set forth by this article, notwithstanding the provisions of § 35-104 of this chapter.

(b) Initiation

Prior to accepting construction bids on work to be done on public property, the commission, agency, utility, corporation, firm or individual shall submit to the commission project designs for review and recommendation.

(c) Completeness Review

The planning director shall review the plan review application for completeness in accordance with § 35-451(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the historic and design review commission.

(d) Decision *(See § 35-451(d) of this chapter.)***(e) Approval Criteria** *(See Article 6, division 2 of this chapter)*

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- (f) **Subsequent Applications** *(See § 35-451(f) of this chapter.)*
- (g) **Amendments** *(See § 35-451(g) of this chapter.)*
- (h) **Scope of Approval** *(See § 35-451(h) of this chapter.)*
- (i) **Recording Procedures** *(See § 35-451(i) of this chapter.)*

(Ord. No. 98697 § 6)

35-455 Demolition Permit Applications**(a) Applicability**

The provisions of this section apply to any application for demolition of an historic landmark (§ 35-614 of this chapter). The provisions of this section apply to any historic landmark or any property located within an historic district.

(b) Initiation**(1) Historic Landmarks and Contributing Properties.**

The applicant shall submit all necessary materials to the historic preservation officer hereafter referred to as the (HPO) at least fifteen (15) days prior to the HPO hearing in order that staff may review and comment and/or consult on the case. Staff and/or professional comments shall be forwarded to the HPO for consideration and review and made available to the applicant for consideration prior to the hearing. The HPO may require that an applicant furnish such additional information that is relevant to its determination of unreasonable economic hardship and may require that such additional information be furnished under seal. The HPO or its agent may also furnish additional information as the HPO believes is relevant. The HPO shall also state which form of financial proof it deems relevant and necessary to a particular case. In the event that any of the required information is not reasonably available to the applicant and cannot be

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obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained.

(2) Other Demolition Permits.

All applications for permits to demolish buildings, objects, sites, or structures which are not historic landmarks, contributing properties, or an intrusion in the district shall be referred to the city HPO for the purpose of determining whether or not the building, object, site, or structure may have historical, cultural, architectural, or archaeological significance.

(c) Completeness Review

The planning director shall review the demolition permit application for completeness in accordance with § 35-451(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the historic and design review commission.

(d) Decision**(1) Historic Landmarks.**

Whenever an application for a certificate regarding the demolition of an exceptional or significant landmark shall be submitted to the historic and design review commission, the historic and design review commission shall not hold a public hearing on the application for sixty (60) days from the date the application is received by the department of planning. This time period is intended to permit the city HPO to discuss the proposed demolition informally with the property owner, other city officials and local preservation organizations, to see if an alternative to demolition can be found before a formal consideration of the application by the historic and design review commission. The city HPO shall prepare a report to the historic and design review commission analyzing alternatives to demolition, and request from other city departments or agencies information necessary for the preparation of this report.

If within this sixty-day period any one of the following three (3) events shall occur, the historic and design review commission may defer hearing the application for six (6) months and it shall be considered to have been withdrawn by the applicant during such six-month period:

- the owner shall enter into a binding contract for the sale of the property,
- approved arrangements shall be made for the structure to be moved to an approved new location, or
- the city of San Antonio shall determine to condemn the property and take it by

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the power of eminent domain for rehabilitation or reuse by the city or other disposition with appropriate preservation restrictions in order to promote the historic preservation purposes of this chapter to maintain the structure and protect it from demolition.

If within the sixty-day period none of the three (3) events summarized above shall have occurred, the historic and design review commission shall schedule a hearing on the demolition application at its next regularly scheduled meeting following the expiration of the sixty-day period, shall request all knowledgeable parties to comment at the hearing on the proposed demolition, and shall make its written recommendation within thirty (30) days after hearing the request for demolition. The historic and design review commission shall also request the city engineer to prepare a report on the state of repair and structural stability of the structure for which an application to demolish has been filed. This report shall be presented to the city HPO prior to the date of the historic and design review commission's hearing on the demolition permit application, and shall become part of the administrative record on the application.

(2) Other Demolition Permits.

If the property is not an historic landmark, contributing property, or an intrusion in the district, the HPO shall determine whether or not the building, object, site, or structure may have historical, cultural, architectural, or archaeological significance within thirty (30) days after receipt of the completed application and shall notify the director of development services in writing. If the building, object, site, or structure is determined to have no cultural, historical, architectural, or archaeological significance, a demolition permit may be issued immediately, provided such application otherwise complies with the provisions of the demolition ordinance and all city code requirements. If the building, object, site, or structure is determined by the city HPO to have historical significance, the HPO shall promptly make such information available to the historic and design review commission for review and recommendation as to significance. If the historic and design review commission concurs in the significance, the historic and design review commission shall recommend to the city council that the building, object, site, or structure be designated, as appropriate, an exceptional or significant historic landmark. Following such determination, the applicant may request a demolition permit by following the procedures for historic landmarks or properties within an historic district as prescribed in this section.

(e) Approval Criteria

See Article 6, § 35-614 of this chapter.

(1) Exceptional Historic Landmark.

Should the applicant for a certificate regarding demolition of an exceptional historic landmark satisfy the historic and design review commission that he will suffer an unreasonable economic hardship if a demolition permit is not issued, the historic and

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design review commission shall recommend approval of a certificate for the issuance of a demolition permit.

(2) Significant Historic Landmark.

Should the applicant for a certificate regarding demolition of a significant historic landmark satisfy the historic and design review commission that he will suffer an unreasonable economic hardship if a demolition permit is not issued, or, in failing to demonstrate unreasonable economic hardship, the applicant demonstrates unusual and compelling circumstances which dictate demolition of the significant historic landmark, the historic and design review commission shall recommend approval of a certificate for the issuance of a demolition permit.

(3) Contributing Property.

Should the applicant for certificate regarding demolition of a contributing property in an historic district satisfy the historic and design review commission that he will suffer an unreasonable economic hardship if a demolition permit is not issued, or, in failing to demonstrate unreasonable economic hardship, the applicant demonstrates unusual and compelling circumstances which dictate demolition of the property, approval of a certificate shall be made.

(4) Property Deemed To Be An Intrusion Into The District.

In those cases in which the historic and design review commission finds that a building, object, or structure proposed for demolition is located in an historic district, but is considered an intrusion in the district, the historic and design review commission shall reaffirm the evaluation of the resource as an intrusion using criteria set forth in this article prior to granting approval of a certificate regarding demolition. When the resource is determined to be an intrusion, the historic and design review commission shall not recommend approval of a certificate regarding demolition unless the property owner agrees to minimum landscape and maintenance requirements as specified under §§ 35-615 through 35-616 and all other city ordinances and codes. In any event, when the historic and design review commission recommends approval of such certificate, demolition permits for buildings, objects, sites, or structures in historic districts shall not be issued until all plans for the site have received Should the applicant for certificate appropriate city boards, commissions, departments and agencies.

(f) Subsequent Applications *(See § 35-451(f) of this chapter.)*

(g) Amendments *(See § 35-451(g) of this chapter.)*

(h) Scope of Approval**(1) Other Agency Approval Required.**

When the historic and design review commission recommends approval of a certificate regarding demolition of buildings, objects, sites, or structures in historic districts, permits shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, departments and agencies.

(2) Replacement Plans.

Following recommendation for approval of demolition, the applicant must seek approval of replacement plans consistent with the criteria set forth in § 35-609 to 35-613 prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to, project concept, preliminary elevations and master development plans, and completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction. Applicants that have received a recommendation for a certificate and approval of required replacement plans shall be permitted to receive such demolition permit without additional historic and design review commission action on demolition, following the posting by the applicant of a performance bond and a payment bond in an amount sufficient to cover all construction costs and to inure to the benefit of the city of San Antonio. If a contractor has been selected, then the bonds may come from the contractor and shall inure first to the benefit of the city of San Antonio, second to the benefit of the developer.

(3) Certificate for New Construction.

Applicants that have received an approval of a certificate regarding demolition shall be permitted to receive a demolition permit without additional historic and design review commission action on demolition, following the historic and design review commission's recommendation of a certificate for new construction. Permits for demolition and construction shall be issued simultaneously if requirements of § 35-609, new construction, are met, and the property owner provides financial proof of his ability to complete the project.

(i) Recording Procedures *(See § 35-451(i) of this chapter.)*

Applicants that have received a recommendation for a certificate for demolition of an historic landmark shall document buildings, objects, sites or structures which are intended to be demolished with 35mm slides or prints, preferably in black and white, and supply a set of slides or prints to the HPO. Applicants shall also prepare for the HPO a salvage strategy for reuse of building materials deemed valuable by the HPO for other preservation and restoration activities.

(Ord No. 98697 § 4 & 6)

35-456 to 45-469 Reserved

Division 6 - FLOODPLAIN DEVELOPMENT PERMIT (Moved to Appendix F)

(Ord. No. 95573 § 1, Amendment "A")

Division 7 - SPECIAL PROCEDURES FOR EDWARDS AQUIFER OVERLAY DISTRICT (ERZD)**35-470 Administration**

The San Antonio Water System (SAWS) shall be responsible for the administration of the development standards within the ERZD. The administrative official for the purpose of this division shall be the president/CEO of SAWS, and his chiefs, vice-presidents and department directors insofar as they may be charged by the president/CEO and/or the provisions of this division with duties and responsibilities with reference thereto. Specifically, but without limitation, the San Antonio Water System shall ordinarily administer and enforce the provisions of this division as directed by the president/CEO. The development services department, public works department, and other appropriate departments of the city of San Antonio, and the San Antonio Water System shall coordinate respective activities and cooperate to provide efficient and effective administration and enforcement of this division.

(Ord. No. 98697 § 6)

35-471 Environmental Assessment Report

The staff recommendation on all zoning/rezoning cases within the ERZD requiring a specific use application or for underground storage tank sites on the Edwards Transition Zone which may potentially have a detrimental impact on the environment as determined by the San Antonio Water System shall include a report containing a background description to include a discussion of the development, surrounding uses, geologic factors, on-site point and non-point pollution sources, sewer lines, proposed pollution abatement structures, and whether a water pollution abatement plan has been submitted.

The report shall also contain a summation of facts and implications on the recharge zone; recommendations on zoning, pollution abatement plan needs, and monitoring requirements; maps of the development and surrounding developments; and a copy of written comments which will be forwarded to the Texas Environmental Quality Commission. The report shall be made available to the applicant.

35-472 Water Pollution Abatement Plan

A water pollution abatement plan approved by the Texas Environmental Quality Commission shall be required for all regulated development as established and defined by Texas Administrative Code, 31 TAC 213.1-213.11, prior to the issuance of a building permit and/or certificate of occupancy.

35-473 Aquifer Protection plan**(a) Applicability**

No development shall be undertaken on any land, tract, parcel, or lot which is within the boundaries of the Edwards Aquifer Recharge Zone and which is subject to regulation by this division unless and until an aquifer protection plan is issued to the owner or developer of such property. An aquifer protection plan issued under this division shall expire if not utilized within three (3) years from the date the aquifer protection plan was issued.

(b) Initiation

Application for the aquifer protection plan required under subsection (a), above, herein shall be submitted to the watershed protection and management department and shall be accompanied by a site development plan. The application and site development plan shall contain the information required by Appendix B, § 35-B105 of this chapter.

(c) Completeness Review

Completeness review the aquifer protection plan shall occur concurrent with the application for development approval. The chief of Water Resources of SAWS shall review the application for completeness as set forth in § 35-402 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission. The time limits and procedures for completeness review shall be governed by § 35-402.

(d) Decision

The decision approving or denying an aquifer protection plan shall be rendered by the San Antonio Water System as a ministerial decision. The decision may be appealed to the CEO of SAWS then to the SAWS board of trustees and then to the city council.

(e) Approval Criteria

The application for aquifer protection plan shall conform to the requirements of the Edwards Aquifer Recharge Protection standards, § 35-521 of this chapter.

(f) Subsequent Applications

Not applicable.

(g) Amendments

An amendment to an aquifer protection plan shall be made in the same manner as the original application therefore.

(h) Scope of Approval

After approval of an aquifer protection plan, the applicant may apply for a building permit as provided in this chapter.

35-473 continued

(i) Recording Procedures

A copy of the aquifer protection plan shall be provided to the director of development services.

(Ord. No. 98697 § 1 & 4)

35-474 Enforcement

All development located within the area defined as the Edwards Aquifer Recharge Zone over which the city of San Antonio may exercise its jurisdiction, including such areas: within the corporate limits of the city, within the extraterritorial jurisdiction of the city where applicable, and outside the territorial limits of the city and within Bexar County, as allowed by law, must comply with the provisions of this division. Any act or omission contrary to the requirements or directives of this division, or any breach of any duty imposed by this division shall constitute a violation hereof.

(Ord. No. 98697 § 6)

DIVISION 8 - PROCEDURES IN AIRPORT OVERLAY DISTRICT

The purpose of the master development plan is to ensure the proposed development complies with the provisions and intent of this chapter. The plan review will focus on the following:

- *Ordinance provisions. Permitted uses, floor area ratio, potential visual and electrical interference, and storage of flammables.*

Intent. The site design should locate the most intensive uses farthest away from the end and centerline of the runway.

35-475 Site Plan in Military Airport Overlay District

(a) Applicability

The provisions of this section apply to any application for development approval within the military airport overlay zone. Except for single-family residences, a site plan shall be submitted to the director of development services for approval by the planning commission prior to the issuance of building permits. All building plans must be in compliance with an approved site plan. The plan review fee shall be in addition to any other required fees.

(b) Initiation

The site plan shall be submitted to the director development services. The plan shall include the information required by Appendix "B" to this chapter.

(c) Completeness Review

The director of development services shall review the application for an MAOZ site plan in accordance with § 35-402 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the board of adjustment.

(d) Decision

(1) Staff Review.

The director of development services shall, upon receipt of the site plan, distribute copies to other departments/agencies as the director deems necessary. Departments/agencies receiving copies of the site plan shall, within twenty (20) days of receipt of the plan, submit to the director of development services their written recommendation and comments about the plan. No later than thirty (30) days after submission of the site plan, the director of development services shall submit the plan with a recommendation to the planning commission for consideration.

If the application requests a change in zoning in a military airport overlay zone, the director shall make formal request to the United States Air force at least thirty (30) days prior to the zoning commission hearing for any relevant statistics,

operational activities information, technical data, or other studies with bearing on the request

(2) Planning Commission Consideration.

The city planning commission may approve the plan submitted, amend and approve the plan as amended, or disapprove the plan. If approved, the plan with amendments, if any, shall be stamped "approved" and be dated and signed by the chairman of the planning commission and by the secretary of the commission.

(e) Approval Criteria

No site plan shall be approved unless the application complies with the regulations of the military airport overlay zone and the applicable base zoning district.

(f) Subsequent applications

Not applicable.

(g) Amendments

(1) Minor Changes.

After favorable action by the planning commission, minor alterations which do not substantially change the concept of the site plan may be approved by the director of planning, if required by engineering or other circumstances not foreseen at the time the plan was approved. Minor changes may not cause any of the following:

- An increase in the floor area ratio.
- A change in location or an increase in size of any storage containers for flammable or combustible materials.
- An increase in the dimensions of any glass or other reflective surfaces.

(2) Major changes.

Major alterations to the site plan shall be resubmitted for consideration by the planning commission following the same procedures required in the original adoption of the plan. Major changes to a site plan include any alterations which would cause any of the above conditions as well as those which are determined as such by the director of development services.

(h) Scope of Approval

one copy of the approved plan shall be submitted to the director of development services for use in issuing building permits. In addition, other copies of the approved plan may be requested as necessary by other departments and agencies.

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The construction of the proposed development shall be started within twelve (12) months of the effective date of approval of the site plan by the commission. The planning commission may, no sooner than sixty (60) days prior to the end of the time period, upon request of the developer, extend the time one additional year if, in the judgment of commission, additional time is warranted. In any event, construction must be started within two (2) years of the effective date of approval. Failure to begin the development within the required time period or the period as extended shall automatically void the site plan, and no building permit shall be issued until the plan or an amended plan has been resubmitted and properly approved by the commission.

(i) Recording Procedures

The applicant shall cause the order approving the site plan, duly certified, and legal description and accompanying map Appendix required by Appendix "B" to this chapter, to be recorded in the office of the register of deeds of Bexar County. No application for a building permit shall be approved until the applicant provides the director a copy of the recorded notification, affixed with the register's seal and the date, book and page number of recording. Compliance with any other provisions of this Article pursuant to which the Site plan was approved shall constitute compliance with this section.

(Ord. No. 98697 § 1 & 6)

DIVISION 9- LANDSCAPING AND TREE PRESERVATION PERMITS**35-476 Landscape plans****(a) Application**

If the landscaping standards apply to a building site, a landscape plan must be submitted to the director of development services with the application for a permit for work on the site. All landscape plans shall comply with the mandatory provisions of Appendix "B" to this chapter.

(b) Completeness Review

Completeness review shall be governed by this section and § 35-402, to the extent not inconsistent with this section. The director of development services shall review the landscaping plan for completeness within five (5) days. The landscaping plan may be reviewed for completeness concurrent with the application for approval of a building permit. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(c) Processing Procedures Prior to Building Permit

When a landscape plan is required, the plan must be submitted to and approved by the director of development services before a building permit is issued for the work. The

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director of development services shall review the landscape plan to verify compliance with all requirements of this section prior to the issuance of a building permit. A building permit shall not be issued for the construction or alteration of a building within the city unless the director of development services approves the landscape plan verifying that the applicant's plan complies with this article.

(d) Processing Procedures Prior to Certificate of Occupancy**(1) Generally.**

Except as provided below, no final certificate of occupancy shall be issued by the director of development services for the occupancy of a new or altered building unless the plant and screening materials required by this article have been provided. In addition a letter from a Licensed Irrigator certifying that the irrigation system was installed in accordance with the certified landscape plan prior to the issuance of a certificate of occupancy, the director of development services shall inspect the building site to verify compliance with the approved landscape plan.

(2) Temporary Certificate of Occupancy.

The director of development services may issue a temporary certificate of occupancy with a term up to six (6) months if the owner provides a signed affidavit certifying that the required work shall be completed within that time. The director of development services may renew the temporary certificate of occupancy for one additional six (6) month period due to unusual circumstances. If at the end of the period authorized for the temporary certificate of occupancy, the required landscaping has not been installed, the property owner shall be in violation of this chapter.

(3) Permanent Certificate of Occupancy.

A permanent certificate of occupancy may be issued prior to the installation of required plant and screening materials when a lending institution will not accept a temporary certificate of occupancy for permanent financing. In those instances, the applicant shall present an affidavit signed by an officer of the lending institution stating their requirement for a permanent certificate of occupancy.

(4) Affidavit.

In addition to the affidavit from the lending institution, the property owner shall also provide an affidavit acknowledging that if the required plantings and screening are not installed and approved within six (6) months from the date the permanent certificate of occupancy is issued, the certificate of occupancy may be revoked and the property owner shall be in violation of this chapter. The owner's affidavit shall also acknowledge that failure to comply with the ordinance shall authorize the director of development services to disconnect utility services in addition to other judicial remedies.

(Ord. No. 95573 § 7 Amendment "G", Ord No. 98697 § 4 & 6)

35-477 Tree Permits**(a) Applicability**

The provisions of this section apply to any activity subject to the tree preservation standards.

(b) Initiation

(1) Application to City Arborist.

A valid application for permit must be filed and approved with the city arborist before:

- A. Mitigating, removing, or destroying any significant or heritage trees that are required to be counted for calculating minimum tree preservation percentages as provided in the tree preservation standards; or
- B. Any person conducts a regulated activity, as defined in Subsection (a) of §35-523, on property subject to this section that may result in the removal or destruction of any such tree.

(2) Affidavit.

In lieu of a tree preservation plan, an applicant may submit a notarized tree affidavit with fees and required information may be submitted verifying that no Significant or Heritage trees required to be counted for calculating minimum tree preservation requirements will be damaged or removed as a result of the application or receipt of the approval requested.

(3) Single-Family Residential Developments.

At the platting or subdivision review, an application for a tree permit may include a tree preservation plan. See Section 35-B123.

(4) Combined Landscape Plan & Tree Survey.

The landscape plan (Section 35-476) and/or the streetscape plan (Section 35-512) may be combined with a tree preservation plan. A combined plan may be submitted at the discretion of the applicant and must include all the submittal requirements required by each plan.

(5) Educational Seminars and Pre-application Meetings.

- A. Applicants are encouraged, but not required, to attend educational seminars conducted by the city arborist and/or establish pre-application conferences as provided by this subsection.
- B. Applicants are encouraged, but not required, to request a preliminary plan meeting for a proposed project to determine the specific requirements and to maximize use of preserved trees and understory to meet the tree preservation, landscape and streetscape standards.

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- C. Prior to the commencement of any activities requiring a tree permit, the applicant may request a pre-construction conference with the city arborist in order to review procedures for protection and management of all significant, heritage or mitigation trees.

(c) Completeness Review

The city arborist shall review the application for a tree preservation permit for completeness within fifteen (15) days. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision**(1) Generally.**

The tree permit application and tree preservation plan technical review shall be completed by the city Arborist within thirty (30) days. If the city arborist finds that the work described in the application for a permit and the plans and other data conforms to the requirements of the tree preservation standards and that the fees have been paid by the applicant, the city arborist shall issue a tree removal permit to the applicant.

(e) Type of Hearing

The application for a tree preservation permit shall be processed as a ministerial permit pursuant to § 35-401. A public hearing is not required.

(f) Approval Criteria

A tree preservation permit shall comply with the tree preservation standards, § 35-523 of this chapter.

(g) Subsequent Applications

Not applicable.

(h) Amendments

Notification and approval of the city arborist are required if changes need to be made to an approved tree preservation plan. Approval of the changes must be received from the city arborist, in writing, before commencement of any work that is the subject of the change or field adjustment.

(i) Scope of Approval

A tree preservation permit shall remain valid for the longer of:

- (1)** The period of validity of the permit or authorization that triggered the requirement for obtaining the tree preservation permit (i.e. building permit, plat, etc.); or

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- (2) one hundred eighty (180) days from the date of issuance if the tree permit was obtained solely for the removal of trees.

(j) Recording Procedures

It shall be the responsibility of the permit holder to maintain a copy of the tree permit, the data and drawings required by this section, and the conditions of approval imposed by the city arborist readily available at the site at all times during which the authorized work is in progress.

(Ord. No. 97332 § 4)

35-478 Woodlands Preservation**(a) Applicability**

The provisions of this section apply to any application for development approval in which the applicant elects to utilize the woodlands preservation plan option as an alternative method to obtain a tree permit.

(b) Initiation

Where the applicant elects to provide a woodlands preservation plan:

- (1) The woodlands preservation plan shall be filed with the master development plan, if required; the application for a letter of certification for a subdivision plat; or the application for approval of a building permit if no subdivision plat or site plan is required.
- (2) The woodlands preservation plan shall be approved prior to mitigating, removing, or destroying any tree within the designated tree stand delineation area.
- (3) The landscape plan required by § 35-476 may be combined with the woodlands preservation plan required by this section at the discretion of the applicant. When a combined plan is submitted it shall be sufficient for satisfying the requirements of both section 35-476 and this section.
- (4) An affidavit shall not be filed in lieu of a woodlands preservation plan.

(c) Completeness Review

The woodlands preservation plan shall include the information required by Appendix "B" to this chapter. The city arborist shall review the woodlands preservation plan within fifteen (15) days.

(d) Decision**(1) Generally**

If a woodlands preservation plan is submitted to meet the requirements of the woodlands preservation standards, it shall be reviewed by the city Arborist for compliance within twenty (20) days. If the city Arborist finds that the work described in the application for a permit and the plans and other data conform to the requirements of this section and that the fees have been paid by the applicant, the city arborist shall approve the woodlands preservation plan.

(2) Combined Landscaping Plan and Woodlands Preservation Plan

If the landscaping plan and the woodlands preservation plan are combined, the department of development services official responsible for the review and approval of the landscape requirements of § 35-476 shall also review and approve those portions of the application relating to the landscaping and streetscaping standards. All items identified in the data and drawings used in combined plans shall clearly indicate whether they are to be applied to satisfy the requirements of this section or § 35-476 (landscaping), or if they are intended to satisfy the requirements of both sections.

(e) Type of Hearing

The application for a tree permit shall be processed as a ministerial permit pursuant to section 35-401. A public hearing is not required.

(f) Approval Criteria

A woodlands preservation plan submitted for meeting the requirements of the woodlands preservation standards shall comply with those standards set forth in Section 35-524.

(g) Subsequent Applications

Not applicable.

(h) Amendments

Notification and approval of the city arborist are required if changes need to be made to an approved woodlands preservation plan. Approval of the changes must be received from the city arborist, in writing, before commencement of any work that is the subject of the change or field adjustment.

(i) Scope of Approval

A woodlands preservation plan shall remain valid for the period of validity of the permit or authorization that triggered the requirement for obtaining the tree permit (i.e. master development plan, building permit, plat, etc.).

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(j) Recording Procedures

It shall be the responsibility of the permit holder to maintain a copy of the approved woodlands preservation plan, the data and drawings required by this section, and the conditions of approval imposed by the city Arborist readily available at the project site at all times during which the authorized work is in progress.

(Ord. No. 97332 § 5)

35-479 Reserved**DIVISION 10 - VARIANCES & APPEALS****35-480 Generally****(a) Notice of Hearings**

Public notice of hearings before the board of adjustment shall be given for each separate appeal thereby by publication one (1) time in a paper of general circulation in the city, stating the time and place of such hearing which shall not be earlier than ten (10) days from the first date of such publication, and in addition thereto, the board of adjustment shall mail notice of such hearing to the petitioner and to the owners of property lying within two hundred (200) feet of any point of the lot or portion thereof on which a variation, or exception, is desired and to all other persons deemed by the board of adjustment to be affected thereby. Such owners and persons shall be determined according to the current tax rolls of the city.

(b) Powers Strictly Construed

Nothing herein contained shall be construed to empower the board of adjustment to change the terms of this article, to effect changes in the official map or to add to the specific uses permitted in any district. The powers of the board shall be so construed that this article and the official map are strictly enforced.

(c) Findings of Fact

Every decision of the board of adjustment shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions required to exist on any matter upon which the board is required to pass under this article or to affect any variance in this chapter shall be construed as limitations on the power of the board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed compliance with this article.

(d) Recommendation From Other Public Agencies

The board of adjustment shall receive and consider recommendations from public and semipublic agencies before rendering a decision in any case before the board. To this end, the board shall, in addition to the other requirements of this chapter, notify all agencies deemed to have an interest in the case.

(Ord. No. 98697 § 6)

35-481 Appeals to Board of Adjustment**(a) Applicability****(1) Generally.**

Except as provided by Subsection (2), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

- a person aggrieved by the decision; or
- any officer, department, board, or bureau of the city affected by the decision.

(2) Exception.

A member of the governing body of the municipality who serves on the board of adjustment under VTCA Local Government Code § 211.008(g) may not bring an appeal under this section.

(b) Initiation**(1) Application.**

Such appeal shall be taken by filing with the director of development services and with the board of adjustment, within the time provided by this chapter, a notice of appeal specifying the particular grounds upon which the appeal is taken and the payment of the fee specified in Appendix "C". Upon receipt of a notice of appeal, the director of development services shall transmit to the board of adjustment all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.

(2) Special Exceptions

Special exceptions may be granted for the following uses subject to the conditions specified. The granting of the special exceptions may be revoked if the conditions specified for each special exception are not maintained at all times.

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- A. **Noncommercial parking lots.** Surface parking lots for nonresidential uses may be permitted in residential zoning districts subject to the conditions listed below:
1. The parking lot shall be used only for the noncommercial parking of private motor vehicles of customers and employees. All other uses, including but not limited to the following, are prohibited: The sale, display, storage, repair, servicing, or dismantling of any vehicles, equipment, or merchandise.
 2. The parking of vehicles awaiting repair or service.
 3. The parking of trucks over three-fourths (3/4) ton capacity).
- B. The property on which the proposed parking lot is to be located shall be platted in accordance with Article IV of this chapter
- C. The parking lot shall be properly graded for drainage; surfaced with concrete, asphaltic concrete, or asphalt; and maintained in good condition. The parking lot shall be kept free of weeds, litter, and debris.
- D. Individual parking spaces shall meet the minimum size requirements of Division 6, 35-526 of this article.
- E. No advertising signs shall be permitted on the lot other than signs indicating the owner or lessee of the lot and providing parking instructions. Sign lettering shall be limited to a maximum height of six (6) inches.
- F. The parking lot shall not encroach within the front yard setback and shall maintain a minimum setback of ten (10) feet along all other perimeters adjacent to public streets or residential zones. The board of adjustment may vary the setbacks as necessary to protect the residential neighborhood. Barriers shall be installed to prevent parking within the required setback areas.
- G. Parking lot driveways shall be located to minimize interference with residential traffic. If a parking lot abuts two streets of different classifications (e.g., collector versus local street), access shall be restricted to the street with the higher classification.
- H. Unless specifically authorized by the board of adjustment, the parking lot shall not be used between seven o'clock p.m. and seven o'clock a.m. If authorized to be used at night, the lot shall be properly and adequately lighted. The standards to which the lights are affixed shall not exceed fifteen (15) feet in height and the lighting shall be confined within the

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boundary lines of the parking lot. The parking lot shall be provided with a gate or other sufficient barrier against vehicle entry during the hours the facility served is closed.

- I. Landscaping.
 - i. All required front, side, and rear setback areas shall be landscaped and attractively maintained. The minimum plant requirements per one hundred (100) linear feet of setback area shall include two (2) canopy trees, four (4) understory trees, and twenty (20) shrubs. In addition the setback areas shall be planted with lawn or evergreen ground cover. Plant requirements shall be applied proportionally to setback areas of less than one hundred (100) feet in length. Existing plants which meet the plant criteria may be counted toward satisfying the landscape requirement.
 - ii. In addition to the setback areas, an additional ten (10) square feet of landscaped area shall be provided and maintained for each parking space over twenty-five (25) spaces. This additional landscaped area shall be distributed in islands and medians throughout the interior of the parking lot and shall be protected with barriers to prevent damage from vehicles.
 - iii. Required landscaped areas shall be provided with either an underground irrigation system or a water connection within one hundred fifty (150) feet of all landscaping.
- J. The lot shall be provided with a masonry wall or other adequate screening not less than three (3) feet nor more than six (6) feet in height at all lot lines fronting upon or adjoining a residential district. However, the board of adjustment may require such masonry wall or other adequate screening at points other than the property line if it determines such location provides more protection to the neighborhood. The screening or masonry wall shall in all cases surround the parking lot. On a corner lot, the wall or screening shall be erected back of the area designated by this chapter for corner visibility. Wheel guards shall be installed and maintained above ground at all such walls or screening to prevent vehicles from making contact with the walls or screening.
- K. Application for a noncommercial parking lot shall be filed by the owner, lessee, or authorized agent with the department of development services. The application shall be accompanied by a site plan drawn to scale depicting the parking lot layout, proposed driveways, and all landscaping.
- L. Granting of a special exception for a noncommercial parking lot shall be for a definite period of time not to exceed four (4) years, and only after notice and a public hearing as provided in this article for appeals to the board of adjustment. In granting a special exception, the board of

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adjustment may require the noncommercial parking lot to conform to such other conditions as the board may deem necessary to protect the character of the zoning district in which the lot is located.

- M. Prior to actual use of a noncommercial parking lot, the owner or lessee shall obtain a certificate of occupancy from the department of development services to verify compliance with the conditions of the special exception. If a certificate of occupancy is not secured within six (6) months of the date of approval, the special exception shall be null and void and have no force or effect.
 - N. Noncommercial parking lots located in a historic district or landmark site shall conform to the regulations of Article VI Historic Preservation and Urban Design of this code and shall require approval of the parking lot plan from the board of review for historic districts and landmarks prior to construction.
 - O. Noncommercial parking lots authorized prior to April 1, 1989 shall comply with the conditions imposed at the time of their approval; however, their certificates of occupancy shall expire on the date of their approval in 1993. The director of the department of development services shall notify the owner/lessee of these previously authorized lots and advise them that their special exception must be renewed as required by subsection (2)M. above.
- (3) Relocation of any buildings and structures, subject to the following conditions:
- A. Each house must be comparable in size, in quality of construction and in condition to the average of other houses in the area.
 - B. The applicant will comply with Chapter 6, Article VII of this Code and with other applicable codes and ordinances.
 - C. The use will conform to such other conditions as the board may deem proper in harmony with section 35-3043 hereof.
 - D. Permits may be granted under this subsection for buildings which the city's fine arts commission has found to have historic and/or architectural significance and where said commission has made a favorable recommendation as to the relocation site. Such exceptions shall contain appropriate conditions as to repairs to be made. Provisions of other codes of the city or of other chapters of this Code shall not be waived.
- (4) Beauty shops and barber shops may be permitted in all residential zones established by this chapter subject to the following limitations, conditions and restrictions:
- A. A site plan shall be submitted indicating the size and location of all structures on the property. In addition, photographs of the structure in which the beauty shop or barbershop is to be located shall be submitted.

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- B. The residential architectural appearance of the structure shall not be changed to that of commercial, although a separate entry for the beauty shop or barbershop shall be permitted.
 - C. Signs advertising the beauty shop or barbershop are not permitted, but a nameplate not exceeding one (1) square foot is permitted when attached flat to the main structure.
 - D. The beauty shop or barbershop shall be located within the main structure on the lot and shall not utilize more than twenty-five (25) percent of the gross floor area of the first floor. In the case of a beauty shop in a duplex, the twenty-five (25) percent gross floor area shall be calculated on one (1) living unit of the duplex. In the case of a beauty shop in an apartment unit the board shall determine the area to be used for said operation.
 - E. The beauty shop or barbershop shall be limited to a one (1) operator shop.
 - F. No person not residing on the premises may be employed in the operation of the beauty shop or barbershop.
 - G. Hours of operation shall be regulated by the board and shall be specified in the minutes of the case.
 - H. That such use will not be contrary to the public interest.
 - I. Granting of the permit for a beauty shop or barbershop in conjunction with a residential use is to be for a definite period of time not to exceed two (2) years, and only after notice and hearings as provided in this chapter for appeals to the board of adjustment.
- (5) Radio and television antennas. In any residential zoning district, antenna locations and heights other than those authorized by section 35-388 may be permitted subject to the following criteria:
- A. The applicant must demonstrate that compliance with section 35-388 of this chapter would preclude effective communication and furthermore, such ineffective communication involves factors beyond the control of the applicant.
 - B. The applicant must comply with all of the requirements of section 35-388.
 - C. In determining the location or height to be permitted, the board of adjustment shall consider the mass of the antenna, the nature of the materials and design of the antenna, the location of the antenna in relation to setback lines, adjacent properties and power lines, the presence of screening structures or landscaping, and the visual impact of the antenna on adjacent properties and public rights-of-way.

(6) Automatic Stay.

An appeal from an order of the director of development services to the board of adjustment shall stay all proceedings unless the director of development services certifies that, by reason of the facts stated in the certificate, a stay in his opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted by the board of adjustment or a court of proper jurisdiction.

(7) Time Limit for Appeal.

The board of adjustment shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. Appeals to the zoning board of adjustment from any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter shall be made within thirty (30) days after such order, requirement, decision or determination by filing with the director of the department of development services and with the board of adjustment a notice of appeal.

(c) Completeness Review

The director of development services shall review the notice of appeal for completeness within two working days. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the board of adjustment.

(d) Decision

(1) Appearance.

A party may appear at the appeal hearing in person or by agent or attorney.

(2) Hearing.

The board of adjustment shall consider the appeal at a quasi-judicial public hearing pursuant to § 35-404. Pursuant to VTCA Local Government Code § 211.009(b), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official. Pursuant to VTCA Local Government Code § 211.009(b), the concurring vote of 75 percent of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official.

(3) Time Limit for Decision.

The board shall decide the appeal within a reasonable time.

(e) Appeal from Board of Adjustment

An appeal from a board of adjustment decision shall be filed pursuant to VTCA Local Government Code § 211.011(b).

(f) Postponement of Case

In the event the zoning board of adjustment postpones a case at the applicant's request, after notices has been given; the hearing will not be rescheduled until the postponement fee specified in Exhibit C has been paid by the applicant.

(Ord No. 98697 § 4 & 6, Ord. No. 101816)

35-482 Zoning Variances**(a) Applicability**

This section shall apply to any application for a variance from the terms of Chapters 2, 3, 5 or 6.

(b) Initiation

An application for a zoning variance shall be filed with the director.

(c) Completeness Review

The director of development services shall review a zoning variance application for completeness within two working days. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the board of adjustment.

(d) Decision

The director shall transmit the application to the board of adjustment. Should the board of adjustment postpone a case at the request of the applicant, after notice thereof has been given, the hearing will not be rescheduled until a postponement fee as specified in Appendix "C" has been paid by the applicant.

(e) Approval Criteria

No variance shall be granted unless:

1. the variance is not contrary to the public interest; and
2. due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship; and
3. by granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.

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4. such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.
5. such variance will not substantially or permanently injure the appropriate use of adjacent conformity property in the same district.
6. such variance will not alter the essential character of the district in which it is located or the property for which the variance is sought.
7. such variance will be in harmony with the spirit and purposes of this chapter.
8. the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.
9. the variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district.
10. the variance will not adversely affect the public health, safety or welfare of the public.

(f) Subsequent Applications

The following time limitations shall be imposed so that no application for a variance shall be received or filed with the board of adjustment:

- If within the previous twelve (12) months an application for a variance or exception was received, considered and denied on the same lot, lots or blocks of land.
- If within the previous six-month period an application for a variance or exception was withdrawn from consideration by the applicant or his representative before the board of adjustment.

The aforementioned time limitations may be waived if new substantial evidence is presented to the board of adjustment and only after receiving nine (9) affirmative votes shall the time limitation be waived. If granted, a new application shall be filed in the office of the director of development services following the procedures outlined in § 35-403, "notice provisions."

(g) Scope of Approval

Where a variance is granted by the Board and no building is started pursuant to such variance within six (6) months after the date of the hearing thereon, the variance becomes null and void and of no force or effect. Property that is not properly platted shall be subject to the condition that platting shall be accomplished prior to the variance taking effect

(h) Special Exceptions

The zoning board of adjustment must find that a request for a special use permit meets each of the five following conditions.

- A. The special exception will be in harmony with the spirit and purpose of the chapter.
- B. The public welfare and convenience will be substantially served.
- C. The neighboring property will not be substantially injured by such proposed use.
- D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.
- E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The above findings of the board shall be incorporated into the official minutes of the board meeting in which the special exception is authorized.

(Ord. No. 95573 § 2, Amendment "B", Ord. No. 98697 § 4 & 6, Ord. No. 101816)

35-483 Subdivision Variances**(a) Applicability**

This section shall apply to any application for a variance from an applicable provision of provisions of Article 5 of this chapter. Variances to plats, and any associated plans and profiles shall be granted by the planning commission, and the applicable county commissioner's court if the property is located within the ETJ, only in conjunction with the consideration of the proposed plat for approval. Except for those administrative exemptions provided by 35-501, variances shall be granted only with respect to the standards for subdivision plat approval, and not for the process for obtaining subdivision plat approval.

(b) Initiation

The applicant shall submit in writing to the director of development services as Secretary of the planning commission, a letter specifying the section for which a variance is requested and stating the grounds for the request along with all supportive facts upon which the applicant believes a variance is warranted. Prior to submitting an application for plat approval the applicant shall submit a variance request for processing to the director of development services. for processing purposes, the request shall be submitted at least twenty (20) days prior to an application request for plat approval.

Each request for a variance shall be accompanied by a filing fee as specified in Appendix "C" and the planning commission shall not consider a variance request until such payment has been made. If a request is for multiple variances, a fee shall be paid for each section or subsection of these regulations from which a variance is sought.

(c) Completeness Review

The director of development services shall review a subdivision variance application for completeness within five (5) working days. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision**(1) Administrative Review and Recommendations.**

The director of development services shall review the facts and distribute the letter to the appropriate departments/agencies who shall, within fifteen (15) days of the receipt of the letter, respond in writing to application and to the planning commission as to the following:

- The section, specific regulation, and the respect in which the item being considered does not comply.
- An evaluation of the specific facts submitted by the applicant and the factors indicated above for use by the planning commission in making its findings.

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- A specific recommendation of either approval or denial and any conditions which the planning commission may wish to impose in considering the variance.

(2) Review and Approval by Planning Commission.

The planning commission shall review the variance application along with the application for plat approval and shall render a written finding approving, denying, or approving with conditions the variance. The findings of the planning commission, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the planning commission meeting at which the variance is considered. In granting variances, the planning commission may impose such reasonable conditions as will ensure that the property will be as compatible as practical with these regulations and surrounding properties. Variances to plats, and any associated plans and profiles may be granted by the planning commission only in conjunction with the consideration of the proposed plat for approval. The plat shall be revised and approved so that it conforms to any exceptions granted herein.

(e) Approval Criteria

The planning commission may grant variances to the requirements of this article if it concludes that strict compliance with these regulations would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of these regulations will be observed, public safety and welfare secured, and substantial justice done. The planning commission may grant a variance only if it finds that:

- If the applicant complies strictly with the provisions of these regulations, he/she can make no reasonable use of his/her property; and
- The hardship relates to the applicant's land, rather than personal circumstances; and
- The hardship is unique, or nearly so, rather than one shared by many surrounding properties; and
- The hardship is not the result of the applicant's own actions; and
- The granting of the variance will not be injurious to other property and will not prevent the orderly subdivision of other property in the area in accordance with these regulations.

(f) Subsequent Applications

The following time limitations shall be imposed so that no application for a variance shall be received or filed with the board of adjustment:

- If within the previous twelve (12) months an application for a variance or exception was received, considered and denied on the same lot, lots or blocks of land.

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- If within the previous six-month period an application for a variance or exception was withdrawn from consideration by the applicant or his representative before the planning commission.

The aforementioned time limitations may be waived if new substantial evidence is presented to the board of adjustment and only after receiving nine (9) affirmative votes shall the time limitation be waived. If granted, a new application shall be filed in the office of the director of development services following the procedures outlined in § 35-403, "notice provisions."

(g) Scope of Approval

A variance granted by the planning commission shall remain valid for three (3) years from the date of plat approval. The force and effect of the variance shall become null and void unless the planning commission grant an extension in accordance with section 35-430(f)(2).

(Ord. No. 98697 § 3, 4 & 6, Ord. No. 99795)

35-484 Development Plat Variances**(a) Applicability**

This section shall apply to any application for a variance from an applicable provision of Article 5 of this chapter for a development plat located inside the city limits. Variances to development plats, and any required information shall be granted by the director.

(b) Initiation

The applicant shall submit in writing to the director of development services, as executive secretary of the planning commission, a letter specifying the section for which a variance is requested and stating the grounds for the request along with all supportive facts upon which he/she believes a variance is warranted. The letter shall be transmitted along with the application for approval of a subdivision plat. Each request for a variance shall be accompanied by a filing fee as specified in Appendix "C" and the planning commission shall not consider a variance request until such payment has been made. If a request is for multiple variances, a fee shall be paid for each section or subsection of these regulations from which a variance is sought.

(c) Completeness Review

The director of development services shall review an application for a development plat variance in accordance with § 35-431(c) of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the planning commission.

(d) Decision

The director shall review the facts and distribute the letter to the appropriate departments/agencies who shall, within fifteen (15) days of the receipt of the letter,

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respond in writing to application and to the director as to the following:

- The section, specific regulation, and the respect in which the item being considered does not comply.
- An evaluation of the specific facts submitted by the applicant and the factors indicated above for use by the planning commission in making its findings.
- A specific recommendation of either approval or denial and any conditions which the planning commission may wish to impose in considering the variance.

The director shall review the variance application along with the application and shall render a written finding approving, denying, or approving with conditions the variance. The findings of the director shall be transmitted to the applicant in writing.

(e) Approval Criteria

The director may grant variances to the requirements of this article if it concludes that strict compliance with these regulations would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of these regulations will be observed, public safety and welfare secured, and substantial justice done. The director may grant a variance only if it finds that:

- If the applicant complies strictly with the provisions of these regulations, he/she can make no reasonable use of his/her property; and
- The hardship relates to the applicant's land, rather than personal circumstances; and
- The hardship is unique, or nearly so, rather than one shared by many surrounding properties; and
- The hardship is not the result of the applicant's own actions; and
- The granting of the variance will not be injurious to other property and will not prevent the orderly subdivision of other property in the area in accordance with these regulations.

(f) Subsequent Applications

The following time limitations shall be imposed so that no application for a variance shall be received or filed with the planning commission:

- If within the previous twelve (12) months an application for a variance or exception was received, considered and denied on the same lot, lots or blocks of land.
- If within the previous six-month period an application for a variance or exception was withdrawn from consideration by the applicant or his

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- representative before the planning commission.

The aforementioned time limitations may be waived if new substantial evidence is presented to the planning commission and only after receiving nine (9) affirmative votes shall the time limitation be waived. If granted, a new application shall be filed in the office of the director of development services following the procedures outlined in § 35-403, "notice provisions."

(g) Scope of Approval

Where a variance is granted by the planning commission and no building permit is granted within six (6) months after the date of the hearing thereon, the variance becomes null and void and of no force or effect. The planning commission may extend this time period for a successive six month periods, for a total time period not exceeding two (2) years, if the applicant files a request for an extension prior to the expiration thereof.

(Ord. No. 98697 § 3, 4 & 6, Ord. No. 99795)

35-485 Variances in ERZD

See Chapter 34, Article VI, Division 6 of the city code.

35-486 Appeals in ERZD

See Chapter 34, Article VI, Division 6 of the city code.

35-487 Variances in Utility Conversion Districts

All other provisions of this chapter to the contrary notwithstanding, the method for seeking a variance to this division shall be as follows:

(a) Applicability

The provisions of this section apply to any application for a variance from the requirements of the utility conversion district, § 35-338 of this chapter. Whenever a property owner or utility customer is required to make modifications to the owner/customer's property in order to continue to receive utility services from the new utility distribution systems which are to be installed in a utility conversion district, and such modifications would pose an undue hardship on the owner/customer in order to comply with the requirements, the owner/customer may apply to the director of public works for a variance from the requirements of the utility conversion district for review, analysis of the feasibility of the request, and a recommendation. The variance request shall be forwarded to the various utility agencies.

(b) Initiation

An application for a variance under this section must:

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- (1) Be in writing;
- (2) State the name of the applicant and the address of the property, and refer to the utility conversion district in which the property lies;
- (3) Describe in full detail the basis for the variance request; and
- (4) Be received in the office of the director of public works within sixty (60) days after the date of the notice to property owners that the utility conversion district has been established by city council.

The preceding time limitation may be waived by the director of public works if the director determines that any delay in the receipt of the application for the variance was not caused by any fault of the applicant. However, under no circumstances shall an application for a variance be considered after the completion of the conversion to underground operation or of the relocation or replacement of existing overhead utility facilities by the utility companies.

(c) Completeness Review

The director of public works shall review the application for a utility conversion district variance in accordance with § 35-402 of this chapter. The appellate agency for purposes of completeness review (see § 35-402(c) of this chapter) shall be the board of adjustment.

(d) Decision

The director of public works shall either grant or deny the variance within thirty (30) days of the application's receipt in the director's office. If the variance is denied, the director shall so notify the applicant in writing, return receipt requested, or by hand delivery. If the variance is denied, the applicant may appeal the decision of the director of public works to city council by filing a written notice of appeal with the city clerk within ten (10) days of the applicant's receipt of the notice of denial of the variance. The city clerk shall then schedule a council hearing on the appeal at the earliest convenient regular council meeting and shall notify both the appellant and the director of Public Works of the date of the council hearing. After holding a hearing on the denial of the variance, the council by majority vote shall either sustain the actions of the director of public works or order the director to grant the variance.

(e) Approval Criteria

The director of public works may grant a variance from the requirements of the district if the director finds both of the following conditions:

- (1) That the requirements for modification of the owner/customer's property pose a degree of practical difficulty which is distinctly unusual among properties located in the district, or that these requirements would otherwise cause an unusual and undue hardship to the property owner or utility customer who is requesting the variance; and

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- (2) That approval of the variance would not be contrary to public policy and would not substantially weaken the general purposes of this division and of the specific utility conversion district in which the property lies.

(f) Scope of Approval

Whenever a variance has been granted under this section, and thereafter utility services are disconnected from the property due to the request, direction or actions of the property owner, the variance becomes null and void. Any reconnection of utility service to the property must be accomplished in a manner consistent with the requirements of this division and of the ordinance which established the utility conversion district.

(Ord. No. 98697 § 6)

35-488 Appeal Procedures for Sexually Oriented Businesses**(a) Appeal to City Board**

An applicant may appeal the denial of a certificate of occupancy for a sexually oriented business by the director of development services, if the reason for the denial is other than one based upon location of the business. Such appeals shall be made to the appropriate board or commission (i.e. plumbing board, electrical board, etc.) and in the manner prescribed in the applicable section of this chapter. In the event that this chapter does not provide a specific avenue for appeal an applicant may appeal to the zoning board of adjustment by letter mailed or delivered to said Board, and the secretary of the board shall schedule the appeal for hearing and decision at the next available regularly scheduled zoning board of adjustment meeting which will allow compliance with the Texas Open Meetings Act. The board, after a hearing at which all interested parties shall be afforded an opportunity to be heard, shall either affirm or overrule the decision of the director of development services. Provided, however, the request for appeal must be made not more than ten (10) business days subsequent to the receipt of the decision of the director of development services by the applicant.

(b) Appeal to Court

Notwithstanding the provisions of this subsection, an applicant who is denied the certificate of occupancy requested under the provisions of this ordinance, may petition to any lawfully established court having jurisdiction of the subject matter, without first appealing to any board, including the zoning board of adjustment.

(Ord No. 98697 § 4 & 6)

35-489 Reserved

DIVISION 11 - ENFORCEMENT, VIOLATIONS & PENALTIES

35-490 Types of Violations

Any act of commission or omission contrary to the commands or directives of this chapter, or any breach of any duty imposed by this chapter, shall constitute a violation hereof.

35-491 Civil Enforcement

(a) Enforcement Actions

The city or any proper person may institute any appropriate civil action or proceedings to prevent violations or threatened violations of these regulations. In particular, but without limitation, in case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter, the city or any proper person may institute any appropriate action or proceedings to (1) prevent such unlawful acts and to restrain, correct or abrogate such violation; (2) prevent the occupancy of the building, structure or land; or (3) prevent any illegal act, conduct, business or use in or about such premises, including but not limited to all remedies provided in VTCA Local Government Code § 211.012. The imposition of any penalty hereunder shall not preclude the city or any proper person from instituting any appropriate action or proceedings to require compliance with the provisions of this chapter and with administrative orders and determinations made hereunder.

(b) Subdivision Plats within Extraterritorial Jurisdiction

Any violation of any provision of these regulations or any other ordinance establishing rules and regulations governing plats and subdivisions of land outside of the corporate limits of the city, but within its extraterritorial jurisdiction:

- (1)** Shall be reported to the city council for whatever action the council may deem proper, and the city attorney shall, when so directed, institute an action in the district court to enjoin the violation of any provision of these regulations or other ordinance in the extraterritorial jurisdiction.

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- (2) Shall not constitute a misdemeanor under such ordinance nor shall any fine provided for in such ordinance be applicable to a violation within the extraterritorial jurisdiction.

(c) Penalties**(1) Violation of Subdivision Plat or Development Standards.**

The penalty for violation of any section or other part of Articles I, II, and V, and Article IV, division 4 of this chapter is hereby established so that the minimum fine shall be twenty-five dollars (\$25.00) and the maximum fine shall be one thousand dollars (\$1,000.00). Each day a violation is permitted to exist shall constitute a separate offense.

(2) Zoning Violations.

The penalty for violation of any section or other part of Article III of this chapter is hereby established so that the minimum fine shall be one hundred dollars (\$100.00) and the maximum fine shall be two thousand dollars (\$2,000.00), provided, however, in the event a defendant has once previously been convicted under Article III, the defendant shall be fined an amount no less than two hundred dollars (\$200.00) and shall be fined no less than three hundred dollars (\$300.00 for a third conviction and for each conviction thereafter. Each day a violation is permitted to exist shall constitute a separate offense.

(3) Civil Penalties Regarding Article 6, Historic Preservation.

The civil penalties for violation of any section or other part of Article 6 of this chapter is as follows:

- A. Any person who constructs, reconstructs, alters, restores, renovates, relocates, stabilizes, repairs or demolishes any building, object, site, or structure in violation of any section or other part of Article VII shall be required to restore the building, object, site, or structure to its appearance or setting prior to the violation. Any action to enforce this provision shall be brought by the city of San Antonio. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.
- B. If construction, reconstruction, alteration, restoration, renovation, relocation, stabilization, or repair of a landmark or of any building, object, site or structure found to have significance or located in an historic district, or located in the river improvement overlay districts, or on publicly-owned land, or on a public right-of-way occurs without a permit or a certificate of appropriateness, then the license of the company, individual, principal owner, or its or his successor in interest performing such construction, reconstruction, alteration, restoration, renovation, relocation, stabilization, or repair shall be revoked for a period of three (3) years.

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- C. If demolition of a landmark or of any building, object, site or structure found to have significance or located in an historic district, or located in the River Improvement Overlay Districts, or located on the publicly-owned property, or on a public right-of-way occurs without a permit or a certificate of appropriateness, then any permits on subject property will be denied for a period of three (3) years. In addition, the applicant shall not be entitled to have issued to him by any city office a permit allowing any curb cuts on subject property for a period of three (3) years from and after the date of such demolition.
- D. If demolition of a landmark or of any building, object, site, or structure found to have significance or located in an historic district, or located in the river improvement overlay districts, or located on publicly-owned property, or on a public right-of-way occurs without a permit or a certificate of appropriateness, then the license of the company, individual, principal owner; or its or his successor in interest performing such demolition shall be revoked for a period of five (5) years.

(10) Criminal Penalties Regarding Article VI, Historic Preservation.

Any persons, firm or corporation violating any section of other part of Article VI of this chapter shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day during which any violation hereof is committed. Upon conviction, each violation shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) per day for each day of each violation.

(d) Remedies**(1) offenses and Liabilities Preserved.**

All offenses committed and all liabilities incurred prior to the effective date of this chapter shall be treated as though all prior applicable zoning ordinances and amendments thereto were in full force and effect for the purposes of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities.

(2) Effect of Other Ordinances and Regulations.

Whenever higher or more restrictive standards are established by the provisions of any other applicable statute, ordinance or regulation than are established by the provisions of this chapter, the provisions of such other statute, ordinance or regulation shall govern.

(3) Effect of Private Covenants.

Nothing herein contained shall be construed to render inoperative any restriction established by covenants running with the land.

(e) Nuisances**(1) Provisions Supplementary.**

Nothing in this chapter shall be construed as repealing any ordinance of the city regulating nuisances or permitting uses which were prohibited prior to the adoption of this chapter.

(2) Declaration of Nuisance.

The erection, threat of erection, construction or maintenance of any building or the use of any premises in violation of the provisions of this chapter shall be, and is hereby declared to be, a public nuisance when such threat, building or use of the premises constitutes a fire, health or traffic hazard or interferes with the reasonable peaceful enjoyment of their homes by citizens living in the vicinity of such buildings or premises.

(3) City Council Hearing.

In addition to the other remedies provided for the enforcement of this chapter, the city council is authorized and empowered to hear and determine the facts in cases of alleged nuisances and where it finds that facts exist which constitute a nuisance as specified in subsection (2) above, the city council may order the cessation and abatement of such nuisance.

(Ord. No. 95352 § 5, Ord. No. 98697 § 6)

35-492 Violation of Conditions**(a) Penalty**

The violation of any condition imposed pursuant to a development order or a permit pursuant to this chapter including, but not limited to, a specific use authorization, conditional zoning district, special exception, shall constitute a violation of this chapter and may be prosecuted in municipal court regardless of whether civil or administrative action is taken against the permit holder. Upon conviction, the permit holder shall be subject to the penalties prescribed in 35-491(c)(2) of this chapter.

(b) Revocation of Permit

The director of development services is authorized to issue any administrative order necessary to terminate or suspend a use found, as a result of the administrative process noted in § 35-406, to be in violation of a condition.

(c) Civil Action

The director of development services may request the city attorney to institute a civil action as prescribed in § 35-491(a) of this chapter regardless of whether a criminal or administrative action is taken against the permit holder.

(Ord No. 98697 § 4 & 6)

35-493 Violations of Tree Preservation Standards**(a) Inside City Limits****(1) Violation Defined.**

It shall be a violation of this division for any person to intentionally or knowingly remove or destroy, or allow the removal or destruction of a significant or heritage tree located on any property to which this chapter applies, or for any person to knowingly or intentionally perform any regulated activity in a manner that does not conform to the requirements of this chapter. Any act or omission contrary to the requirements or directives of this chapter, or any breach of any duty imposed by this chapter shall constitute a violation hereof. In addition to enforcement by the city arborist, this section shall be enforceable by and pursuant to the authority provided in section 35-491 of this chapter.

(2) Penalty.

Any person who commits a violation of this chapter shall be subject to a civil penalty of up to one thousand dollars (\$1,000.00) per violation or a criminal penalty of up to two hundred dollars (\$200.00) per violation per day and may be required to attend one or more training seminars. for the purpose of calculating penalties, each day on which a violation is found to exist shall constitute a separate and sanctionable offense.

(b) Outside City Limits

Whenever a violation of this chapter is believed to have occurred or to be occurring outside the corporate limits of the city but within the city's ETJ, criminal penalties shall not be sought, however, enforcement against such violations is hereby authorized pursuant to and under the authority granted by V.T.C.A., Texas Local Government Code, § 212.001, et. seq.

(Ord. No. 97332 § 6)

35-494 Enforcement of Subdivision Regulations**(a) Permits**

Building permits shall not be issued by the city for any structure on a tract of land [or] lot within the corporate limits of the city which has not been platted and the plat duly recorded in the office of the county clerk.

(b) Utility Service to Land First Served Prior to September 1, 1987

No public utility such as water, sewer, electricity, or gas which is owned, controlled or distributed by the city, will be provided to a lot in a subdivision within the corporate limits of the city or its extraterritorial jurisdiction that has not been platted and the plat duly recorded in the office of the county clerk. In addition, all relevant impact fees required to provide utility service to the land must be paid prior to the provision of service.

(c) Utility Service to Land First Served on or After September 1, 1987

No public utility or city-owned or city-operated utility that provides water, sewer, electricity, gas, or other utility service shall serve or connect any land within the corporate limits of San Antonio or its extraterritorial jurisdiction unless the utility has been presented with or otherwise holds a certificate applicable to the land and issued by the planning commission under section 35-432(d)(4). In addition, all relevant impact fees required to provide utility service to the land must be paid prior to the provision of service.

(d) Completion of Improvements**(1) Liability.**

A subdivider shall be held liable to the city for the completion of all site improvements required by these regulations until such time as the improvements shall have been actually completed and accepted by the city.

(2) Remedy.

If the construction of site improvements has been guaranteed by a form of security described in § 35-438 and such improvements have not been completed

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and accepted by the city within the time period prescribed by these regulations, the director of development services, after written notification has been given to the subdivider, shall take such action as may be required to cause payment to be made to the city of the amounts of money secured by a guarantee of performance. Such amounts of money shall be used by the director of development services to finance the completion of the required improvements. In the event that the amounts of money referred to above are insufficient to finance the completion of the required improvements, the director of development services shall so notify the subdivider in writing and shall require the subdivider either to complete the improvements without delay or to make available to the city the amount of money required to finance their completion. Should the subdivider fail to do either of the above and such failure is not due to strikes, riots, acts of God, acts of the public enemy, injunction or other court action, or any other cause similar to those enumerated beyond the subdivider's control, the director of development services shall refer the matter to the city attorney for such action as the city attorney may deem appropriate to compel the subdivider to comply with the provisions of the performance agreement entered into by the subdivider as a condition precedent to the approval of the plat by the planning commission, or to pursue any other remedy which may be available to the city. Further, until such time as the required site improvements have been completed and accepted by the city, the director of development services shall refuse to accept from such subdivider a performance guarantee under any form which is related to the plat of a subdivision, subsequently filed with the planning commission, in which such subdivider has a principal or subsidiary interest. Such a plat, once it has been approved by the planning commission, may be recorded only in the manner prescribed in Section 35-432(i)(1).

(3) Exemptions.

The provisions of this section shall not apply if a subdivider is prevented completing and having accepted such required site improvements within the prescribed time by reason of strikes, riots, acts of God, acts of the public enemy, injunction or other cause similar to those enumerated beyond the subdivider's reasonable control. The subdivider shall be entitled to an extension of time equal to the time of such delay that shall be fixed by written certificate made by the director of development services. It is expressly declared that no such allowance of time will be made unless claimed by the subdivider and allowed and certified in writing by the director of development services at the end of each period of such delay.

(Ord. No. 98697 § 1 & 6)

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35-496 Violations of ERZD Regulations

In addition to the violations identified in Subdivision A of Division 6, Chapter 34, the following described individual acts or omissions shall constitute separate and actionable violations of the ERZD regulations:

(a) Violations Defined

It shall be a violation of this division for any person to recklessly, negligently, knowingly, or intentionally commit any act or allow any condition to exist which causes degradation of surface water which:

- Is discharged from any development; and
- Flows over an area within the Edwards Aquifer Recharge Zone (EARZ).

Commentary: It is not the intent of this division to place an unreasonable burden on any landowner or to require any person to treat degraded surface water which originates entirely outside their property. Also, these regulations are not intended to prohibit non-polluting discharges from fire hydrant flushing, fire fighting, uncontaminated groundwater, or potable water sources.

(b) Enforcement**(1) Granting of Enforcement Authority to SAWS.**

The president/CEO of SAWS is hereby granted the authority to designate qualified SAWS personnel to enforce this division in the manner and to the extent allowed by law. The president/CEO is specifically granted, the authority to designate qualified SAWS personnel to file notices of violations of this division and to take all necessary actions to file complaints with the municipal prosecutor's office of the city of San Antonio, or other prosecuting authority for violations of this division.

(2) Notice of Violation and Response.

Pursuant to the responsibility established in Subsection (b) of this section and 35-470, above, whenever the watershed protection and management department, believes that any person has violated or is violating any provision of this division, the watershed protection and management department may serve (either personally or by registered or certified mail) upon such person a written notice stating the nature of the alleged violation. The recipient of a violation notice issued under this section must respond to the notice in writing to the watershed protection and management department within fifteen (15) working days from the receipt of such notice. Should the recipient of a violation notice fail to respond in writing to the watershed protection and management department within the initial fifteen (15) working day response period as required by this section, the recipient of the notice shall be deemed to have admitted responsibility for the violation.

(3) Requirements of Response to Notice of Violation.

The response to a violation notice shall be in writing, and shall, at a minimum, include the following information:

- A. A statement as to which of the violation(s) are being admitted by the respondent;
- B. A statement as to which of the violation(s) are being contested by the respondent; and,
- C. The grounds on which the respondent denies responsibility for each contested violation.

(c) Grant of Authority to Pursue Legal Remedies

The SAWS legal department is hereby granted the authority to seek legal and/or equitable remedies for violations of this division, including the filing of criminal charges. for the purpose of enforcing this division SAWS shall represent the city of San Antonio in civil enforcement actions, by and through the San Antonio Water System, and is hereby authorized to seek legal and/or equitable remedies against any person which is reasonably believed to be violating or have violated this division. A legal proceeding prosecuted under this division does not constitute a waiver by the San Antonio Water System of any right the city of San Antonio may have to join in a legal action originating from an alternative source of law. The San Antonio Water System may commence such actions for appropriate legal and/or equitable relief in courts having proper jurisdiction and may seek civil penalties and any other legal or equitable relief available under common law, chapter 54 of the Texas Local Government Code, or any other applicable local, state, or federal code or statute.

(d) Penalties**(1) Criminal.**

A conviction for violation of this division shall constitute a class C misdemeanor. A person convicted of a violation of this division shall be fined a minimum amount of not less than two hundred dollars (\$200.00) per violation and a maximum amount of not more than two thousand dollars (\$2,000.00) per violation. Each violation of a particular section of this division shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this division.

(2) Civil.

A civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) per violation of this division may be imposed. However, a civil penalty in an amount not to exceed five thousand dollars (\$5,000.00) per violation may be imposed for violations which cause pollution of waters flowing into a channel, stream or other conveyance which drains into or is a part of the stormwater sewer system owned or controlled by the city of San Antonio. Each violation of a particular section of

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this division shall constitute a separate offense, and each day such an offense continues shall be considered a new violation for purposes of assessing civil penalties and enforcing this division.

(e) Authority of City Attorney to enforce

The grant of the authority set out in this section shall in no way diminish the authority and responsibility of the office of the city attorney to insure that this division is properly and diligently enforced, to prosecute violations of this division, and to defend the legality of this division if challenged.

(Ord. No. 98697 § 6)

35-497 Sexually Oriented Businesses

Any natural person or corporate entity who violates any provision of the sexually oriented business regulations (§ 35-392) shall be guilty of a Class C misdemeanor offense, and upon conviction thereof; shall be punished by a fine not to exceed two thousand dollars (\$2,000.00).

In addition to the criminal sanctions authorized by the subsection, the city attorney is authored to bring a civil action in law or equity against any party who violates any provision of this section. The city attorney may bring a civil action against a party without first seeking criminal sanctions.

(Ord. No. 98697 § 6)